

EXHIBIT “C”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
BEFORE THE HONORABLE STEVEN I. LOCKE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Proceedings commenced at 10:54 a.m.)

2 THE CLERK: Calling case 23-CV-2084 Siteone
3 Landscape Supply, LLC v. Giordano, et al.

4 Counsel, please state your appearance for the
5 record.

6 MR. GIBBS: Good afternoon, or good morning. I'm
7 Kevin Gibbs here on behalf of the plaintiff, Siteone
8 Landscapes Supply.

9 THE COURT: Gibbs?

10 MR. GIBBS: That's right, Your Honor.

11 THE COURT: Okay.

12 MR. GIBBS: And with me is my partner Matthew
13 Adler, also from my firm, as well as Kevin Mulry is here as
14 well as co-counsel.

15 MR. ADLER: Good morning, Your Honor.

16 MR. MULRY: Good morning, Your Honor.

17 MR. MULE: Good morning, Your Honor. Michael Mule,
18 from Milman Labuda Law Group, on behalf of the defendants.
19 Along with me is Colleen O'Neil and Rob Milman. And also I
20 have my lead attorney, James Orioli.

21 THE COURT: I'm sorry, Bob?

22 MR. MULE: Sorry. No, Rob. Robert Milman.

23 THE COURT: Milman. Okay. But you represent some
24 -- you represent different defendants, or do you all
25 represent all the defendants?

1 MR. MULE: As of mid-September, early, mid-
2 September, we represent all defendants.

3 THE COURT: Okay. We've got a number of motions to
4 get through. I'll try and do this in an orderly fashion as
5 best we're able. I've read all of the papers multiple times.

6 The first motion to compel is Docket Entry 141 with
7 opposition at Docket Entry 145. 141 is a motion by the
8 plaintiff to produce documents and supplemental -- pardon me
9 -- supplemental discovery responses from the Vic defendants.
10 There is push back in the opposition that says -- suggests
11 maybe some of this has been produced. I don't know if that's
12 the case.

13 So, Mr. Gibbs, are you doing the talking today?

14 MR. GIBBS: Yes, Your Honor, I am.

15 THE COURT: Okay.

16 MR. GIBBS: Would you like me to take the podium?

17 THE COURT: You can stay seated if you want, or
18 whatever you want. Just remember, if you're not at a
19 microphone, it won't get picked up.

20 MR. GIBBS: Got it.

21 THE COURT: For a transcript.

22 And so if you want to stand, maybe use the lectern.
23 All right.

24 MR. GIBBS: Perfect. Thank you, Your Honor.

25 THE COURT: So tell me what you need to tell me.

1 Do not feel like you need to repeat every point in your
2 papers, though.

3 MR. GIBBS: Sure, Your Honor. If I may, I'd like
4 to start off on just sort of a brief summary of sort of an
5 overarching theme that we're presented here with today, just
6 give a little bit of background and context.

7 THE COURT: All right. I may cut you off, but go
8 ahead.

9 MR. GIBBS: It will be relatively short, Your
10 Honor. I'd like to just go back just a little bit in time
11 because I think this is very relevant to a number of the
12 arguments that we'll hear from defendants today.

13 So going back to February 27th of this year, Judge
14 Brown held a hearing on the motion to dismiss from the
15 defendants. And in his order, he -- or in his oral order
16 that he made, he specifically denied all of the motions to
17 dismiss in their entirety. There was no reservation. He
18 said the claims should go -- all the claims would go forward
19 into discovery.

20 And he quoted, just really quickly said, I do think
21 this case has to be put on a rapid path in discovery. I
22 think we have to get this to completion rapidly because it's
23 an important ongoing business concern. He closed with -- on
24 that point. He said, but I will say, I do think the case
25 should move faster than slower given the nature of the

1 concerns.

2 Your Honor, since the inception of this case, our
3 client has lost more than \$10 million in revenue to the
4 defendants. So this is certainly an ongoing and very
5 important business concern.

6 With that sort of imprimatur from the court
7 initially, we set a discovery deadline which was actually
8 yesterday, October 14th. We were then here before Your Honor
9 back on May 30th on some discovery motions related to some
10 bank subpoenas that we had issued for some very important
11 financial records.

12 And when we were here, Your Honor said
13 specifically, while I appreciate the skepticism as to some or
14 all of these claims, talking to the defendants, you're
15 essentially asking to the case. I think at discovery, which
16 is not the right juncture for it.

17 And the reason that's important, Your Honor,
18 because in opposition to the bank subpoenas that were issued
19 back in May, they made merits objections. Principally, there
20 is no evidence to support the claims. We don't think the
21 claims have merit for these various legal reasons; these
22 various factual reasons. And Your Honor was very clear that
23 the motion to dismiss has been decided, adjudicated, and the
24 case is in discovery, and we need to move forward
25 expeditiously.

1 And again, the discovery deadline was yesterday.

2 And all that really leads us to why we're here today and why
3 we have filed nine separate motions to compel. And the
4 reasons, they're really not complicated and they're really
5 two-fold.

6 The first reason is the defendants, especially the
7 Vic defendants in particular, they've provided effectively
8 nothing to us in discovery, despite the fact that we have
9 issued discovery requests back in April, we had hours and
10 hours of video conference, meet and confers over the -- over
11 the objections and the responses. We finally got
12 supplemental responses months after that. But they've
13 effectively produced nothing. They have produced -- the Vic
14 defendants have produced 17 documents in total.

15 Only two of the -- two of those documents did
16 SiteOne not already have in its possession. The Don
17 defendants, they've produced a little more, but still
18 effectively nothing. Most of the documents we already had.
19 Several -- half of tier production are Spam emails from
20 LinkedIn and Breathalyzer.net. And so that's the first
21 reason. They've really provided nothing.

22 The second -- the second reason -- again, the
23 reason why I gave that sort of background, Your Honor, is
24 because Judge Brown was clear, you were clear in May, that
25 the merits -- arguing the merits in opposition to discovery

1 requests, that's just really not the proper juncture for it.

2 And that's what we see. A lot of the arguments
3 that we're going to go through are merits arguments. We
4 don't believe their claims. Their claims have no merit. But
5 that's not why we're here, Your Honor. We're in discovery to
6 build the record for our claims, because this is a case where
7 our allegations are that the defendants have acted in a
8 clandestine secretaire manner, communicating among
9 themselves, using these various corporate entities to move
10 money among and between themselves to fund this competing
11 business improperly.

12 And so the evidence -- the evidence to support our
13 claims is not going to come from Siteone. We don't have
14 their phone records. We don't have their text messages, so
15 we have to rely on them to give us these documents in
16 discovery. And so certainly at this point, you know, Your
17 Honor, we don't have, you know, the sort of smoking gun type,
18 you know, text messages, emails, things like that, because we
19 wouldn't have it, Your Honor, because this stuff was done not
20 with Siteone equipment, resources, it was done with their own
21 -- their own accounts and whatnot.

22 So with that backdrop, Your Honor, one thing I
23 would like to provide if the Court would permit me to
24 approach, I have a short -- sort of an outline to accompany
25 the arguments that I would like to make if I could.

1 THE COURT: Did you give a copy to your adversary?

2 MR. GIBBS: I did.

3 THE COURT: Okay.

4 MR. GIBBS: I did, Your Honor.

5 THE COURT: Then you can.

6 MR. GIBBS: Thank you.

7 (Pause)

8 MR. GIBBS: And again, Your Honor, this is pretty
9 straightforward. And there's so many motions. The goal of
10 this was really to hopefully just sort of streamline things,
11 put everything in one place, at least, you know, from our
12 perspective, Siteone's perspective.

13 The first page, which starts on Page 2, that's just
14 an organizational chart just to understand exactly how the
15 parties that are relevant today are grouped to understand the
16 ownership structure and whatnot.

17 The second -- I'm sorry. The third page, this is a
18 summary of defendant's production to date. So it's Page 3.
19 It just gives a more granular detail in case the Court is
20 wondering exactly what has been produced to date. So that's
21 abundantly clear for the record.

22 Page 4, that's a summary of Siteone's production,
23 and you can sort of compare and contrast between the two and
24 I think pretty clearly see the volume of material that
25 Siteone has not only produced, but what we've -- the great

1 efforts that we've gone to, the number of employee's data
2 that we served, the number of documents we reviewed, that all
3 of that has been done in a timely manner. And then Siteone,
4 that we have in fact substantially completed our production
5 at this stage.

6 Page 5 is just a quick description of what we do as
7 a sort of transparency efforts by the parties. We have
8 endeavored -- I personally have endeavored to ensure that
9 defense counsel has been aware of what we're doing, the
10 timing of our productions, what documents -- what data we've
11 collected, what has been search -- the search terms, we've
12 run. The number of hit counts on each search term. We've
13 tried to be very transparent in the process.

14 And initially we thought the defendants would be
15 transparent as well. We did receive from the Don defendants
16 fairly early on, the hit count report, but we had issues with
17 that and it appears that at this point they've not been
18 willing to negotiate over those terms.

19 The Vic defendants, they provided a hit count
20 report, much later, and then also have, you know, refused to
21 sort of engage over that. So that's just a summary of those
22 issues.

23 And then Page 6, it's just a summary of just a list
24 of the, you know, docket numbers for all -- everything that's
25 currently pending before the Court.

1 And then, Page 7 to me is -- this is really where
2 -- and I'm not sure if the Court has a predisposition of the
3 order in which to go through the motions. If you want to go
4 through it, you know, numerically on the docket, but you
5 know, to my mind the sort of meat of the coconut are the
6 motions to compel that we filed. And so Page 7 really is --
7 I tried to in essence sort of bucket the various disputes
8 that we have into these four groups, which I think is
9 hopefully helpful just to show exactly -- this is exactly --
10 these are the areas of dispute from our view of the world.
11 These are the things that we really want from the Court, and
12 these are the, you know, the basic issues that I've
13 identified that are really core to the dispute.

14 And then after that, if we could -- you know, if
15 the Court wants, there is just some further sort of more
16 granular details about the relief that we've requested in
17 terms of meeting and conferring over search terms, searching
18 of text messages, all that stuff.

19 So in terms of actually dealing with the motions
20 themselves, Your Honor, of course it is completely however
21 you would like to go through these. I --

22 THE COURT: Well, I'm not adverse to the way you
23 summarized the motions to compel, but I think Mr. Mule is --
24 just that topically is that -- I'm talking about Page 7 of
25 this handout. Does that seem like an accurate identification

1 of the issues in the motions to compel? Do you see what I'm
2 saying?

3 MR. MULE: These are the -- these are the general
4 categories.

5 THE COURT: So -- well, let me follow up by saying,
6 the reason I ask is if we attack it using the summary of the
7 motions, I would address all the motions essentially at once,
8 and then you obviously can file opposition and we'll do it --
9 we'd do it topic by topic.

10 I was originally prepared to do it in docket entry
11 by docket entry, only out of a concern that we don't
12 accidentally miss anything, because I don't want you to come
13 back on this once you have the rulings.

14 MR. MULE: Yes, Your Honor.

15 THE COURT: So -- and that being said, I will also
16 add, Mr. Mule, let's say you think everything here is
17 accurate but -- in this summary of motions, but two issues
18 are missing. We can also add those to the end. I just -- my
19 concern is just failing to answer any questions. And so what
20 I will either way is to the degree anything is granted, I'll
21 grant it and then say everything else is denied just so that
22 we -- the loop is closed.

23 So what's your reaction to that, Mr. Mule?

24 MR. MULE: I mean, I think your initial way to go
25 about it is probably the more complete way, just to make sure

1 we're not missing anything.

2 THE COURT: Well, they're his motions, right? So
3 by and large.

4 MR. MULE: Yep.

5 THE COURT: Assuming the protective orders are just
6 the flip side of a motion to compel. So I guess I'm -- as
7 I'm sort of musing out loud, it seems to me to the degree
8 anything is missing from the summary, it would be the
9 plaintiff who is missing it. Unless you disagree, Mr. Mule.

10 (Pause)

11 MR. MULE: This is generally the categories.

12 THE COURT: All right. So you're okay, then, with
13 proceeding using the summary. And like I said, Mr. Mule, if
14 something come up and you want to add -- if there are 10
15 topics here and you want to add topics 11 and 12 --

16 MR. MULE: Sure.

17 THE COURT: -- I'm open to that. I'm just trying
18 to make this as efficient as possible.

19 MR. MULE: Yep.

20 THE COURT: Okay. I assume that's what you're
21 asking for, Mr. Gibbs, right?

22 MR. GIBBS: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. GIBBS: Yes, sir. And we can take it, you
25 know, sort of point by point in these lists.

1 THE COURT: Yeah, I'm just -- give me --

2 MR. GIBBS: And I'll tell you, you know, the one
3 thing that's a little different is in the Docket Number 141,
4 which was the initial motion. Really, the only difference in
5 that one is that we do have a request for fees in that, so if
6 we want to address that later --

7 THE COURT: We can deal with fees at the end.

8 MR. GIBBS: Okay.

9 THE COURT: I'll tell you now, I'm not inclined to
10 grant them. But that being said --

11 MR. GIBBS: Okay.

12 THE COURT: -- I will also point out that it seemed
13 to me that the motion at Docket 40 -- 141 and 145 is sort of
14 flushed out with Docket Entries 152 and 173, because Docket
15 Entry 141 is really a historical gripe. It's not, this is
16 the documents I'm missing, please give me them.

17 MR. GIBBS: Well, it -- well, you're right, Your
18 Honor. It does provide the context, I think, for, you know,
19 sort of how we got here, because the ultimate gripe was, they
20 haven't done anything. They've promised, promised, promised.

21 THE COURT: Right. But you can't get -- I can't
22 give an order that says, okay, do everything. That's --

23 MR. GIBBS: That's right.

24 THE COURT: -- not helpful.

25 MR. GIBBS: That -- that -- correct. Correct.

1 THE COURT: So -- which is why it seemed to me that
2 the subsequent docket entries, which were also directed at
3 Vic, have more specific topics. But that being said --

4 MR. GIBBS: That is correct.

5 THE COURT: -- if you want to proceed with the
6 summary --

7 MR. GIBBS: I think that's right, Your Honor.

8 THE COURT: -- that's fine, just, I need a minute
9 because as we're going I'm going to fashion an order that
10 hopefully captures everything.

11 MR. GIBBS: Certainly.

12 THE COURT: And so, I just want to write -- I need
13 to do it by docket number, though, so just give me one
14 second.

15 (Pause)

16 THE COURT: Okay. So you want to start with
17 communications among defendants with -- and with key
18 witnesses?

19 MR. GIBBS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. MULE: Your Honor, may I just ask a question?

22 THE COURT: Yes, sure.

23 MR. MULE: Will I have the opportunity to give a
24 summary and response to Mr. Gibbs' summary before my turn, or
25 now?

1 THE COURT: Yeah, sure. You can do that from your
2 -- where you're -- I mean, you two swap at the podium, and
3 you can also sit where you are and just talk into the mic.

4 MR. MULE: Yeah. Sure.

5 THE COURT: It's up to you.

6 MR. MULE: Yeah, I'll --

7 MR. GIBBS: Sit up here?

8 THE COURT: Yeah.

9 MR. MULE: Sure. Thank you.

10 MR. MILMAN: I guess everybody's very comfortable
11 at the podium. Me, my preference, I'd rather be seated.

12 MR. MULE: All right. Thank you, Your Honor. Just
13 obviously you would expect that my view of the state of
14 discovery in this case is going to be drastically different
15 than that of Mr. Gibbs.

16 From our perspective, this case is a vendetta case.
17 Don settled his claims -- his claims for payment with Siteone
18 on February 21, 2023. The day -- the day after, Nick was
19 terminated, the last of the three individuals who are sued in
20 this case. And Siteone was planning, at that time to -- with
21 this lawsuit. They were -- without telling us, of course,
22 they were planning this lawsuit. Their theory of the case
23 essentially has been that Don, Nick, and Vic are all in
24 cahoots, they're all competing.

25 THE COURT: Were you representing Don and maybe the

1 other defendants too, prior to the initiation of the law
2 suit, or did you only step in upon filing of the complaint?

3 MR. MULE: Yeah. So I came in -- I was
4 representing Don and Vic prior to the lawsuit. They both had
5 settlements with Siteone and my partner was involved in those
6 negotiations as well.

7 THE COURT: Were you involved with the restrictive
8 covenants, like at that point when the purchase was going on?

9 MR. MULE: We were -- we were involved in the
10 restrictive covenants, we were not involved in those drafting
11 back in 2000.

12 THE COURT: So the -- when the asset purchase
13 agreement was executed, you were not the lawyers on that.

14 MR. MULE: We were not the attorneys.

15 THE COURT: And, Mr. Gibbs, you were not the
16 attorneys on that either?

17 MR. GIBBS: No, Your Honor, we were not. Yeah.

18 THE COURT: Okay. So whoever drafted all that is
19 not here.

20 MR. MULE: That's correct.

21 MR. GIBBS: Correct.

22 MR. MULE: That's correct. So you know, so this --

23 MR. MILMAN: They're in a separate lawsuit.

24 MR. MULE: So --

25 THE COURT: Well, that -- I can imagine why.

1 MR. MILMAN: Yeah, exactly.

2 MR. MULE: So, you know, what we -- what we have
3 here essentially is, you had the asset purchase, purchase of
4 assets and garden department. Don was the sole owner. Don's
5 got these restrictive covenants, the last of which expires in
6 January 14 of 2025. So, a few months away. And so Don was
7 paying --

8 THE COURT: And you don't challenge that he was
9 bound by -- whatever they say, he's bound by?

10 MR. MULE: He's bound by, he's bound by it.

11 THE COURT: Okay.

12 MR. MULE: And so the fatal flaw and problem that
13 Siteone has is, they are trying to basically say, we have
14 this noncompete with Don, but the only ones who are competing
15 that they have evidence of are Nick and Vic.

16 THE COURT: Well, and just -- this will -- may
17 guide some of the answers or some of the rulings, is that
18 Scapes, S-C-A-P-E-S, we agree, that is competing with --

19 MR. MULE: Absolutely.

20 THE COURT: -- Siteone. Is Siteone operating as a
21 garden department, or operating as Siteone?

22 MR. GIBBS: There is some legacy, I guess signage
23 for garden department --

24 THE COURT: Okay.

25 MR. GIBBS: -- still, so it's -- it depends on

1 where you look, honestly.

2 THE COURT: Okay. Fair enough. That's fine.

3 Okay, but -- so there's competition. Okay. Please,
4 continue, Mr. Mule.

5 MR. MULE: There's competitions. Absolutely. And
6 that's never been -- from right at the beginning said, Nick
7 and Vic, they're competing. They're competing through
8 Scapes. It was organized in April 2023. Vic was terminated,
9 Nick was terminated, they had no restrictive covenants in
10 their personal capacity. They're entitled to compete.

11 THE COURT: Okay. Then the -- and the Court --
12 I'll call it corporate, but I mean, we're now in personal
13 capacity. Vic signed an agreement on behalf of Narrow Way?

14 MR. MULE: On behalf of Narrow Way, correct.

15 THE COURT: Okay.

16 MR. MULE: So Narrow Way is the landlord of the
17 Coram site. So there are three sites, Coram, Speonk, and Dix
18 Hills.

19 THE COURT: Okay.

20 MR. MULE: At this time, Siteone has basically
21 abandoned all three, it's my understanding. Or they're about
22 to. They have -- they're not operating at Speonk. They're
23 on their way out --

24 THE COURT: Well, that doesn't matter, though.

25 MR. MULE: -- as far as Coram. But I'm just --

1 that's just by way of --

2 THE COURT: It's -- this has to do with the Coram
3 site, right?

4 MR. MULE: This is the Coram site, correct.

5 THE COURT: Okay. And -- I'm sorry. So, he --
6 Narrow Way signed a noncompete through Vic saying, we're not
7 going to compete with -- I'll call it the nursery, with
8 Siteone --

9 MR. MULE: Yeah.

10 THE COURT: -- at the nursery.

11 MR. MULE: Well, it wasn't that. It wasn't that.
12 Narrow Way -- the restrictive covenant in the lease with
13 respect to Narrow Way is that Narrow Way is not going to
14 lease, purchase --

15 THE COURT: Okay.

16 MR. MULE: -- or make land available to somebody
17 who does landscape supply, basically, so --

18 THE COURT: Okay. So they won't act as a landlord
19 to a competitor. Loosely.

20 MR. MULE: Exactly.

21 THE COURT: Okay.

22 MR. MULE: Or they don't want them to, you know, I
23 guess lease it out to, you know, some other landscape supply
24 business.

25 THE COURT: No, no, I get that. And then -- but

1 then the question with respect to that is whether Vic is a
2 beneficiary.

3 MR. MULE: Right. So that's the theory. You know,
4 can an individual who signs in a representative capacity be a
5 beneficiary, and can they be a beneficiary --

6 THE COURT: Say that sentence again slower.

7 MR. MULE: Can an individual who signed this
8 covenant only in a representative capacity be -- legally be a
9 beneficiary of the restrictive covenant that he did not sign
10 in an individual capacity?

11 THE COURT: But you're saying under no
12 circumstances could he be a beneficiary?

13 MR. MULE: I believe that's the legal issue.
14 That's what I'm saying.

15 THE COURT: No, I agree. What I'm saying is -- I'm
16 asking you a question. Is that your position that under no
17 circumstances could he be a beneficiary?

18 MR. MULE: Well, I think it would be a stretch
19 under any circumstances, but I think certainly under the
20 circumstances that we have and the facts that --

21 THE COURT: Well, let me ask you, who would be a
22 beneficiary? Who in your mind would without question be --
23 would fall under that umbrella?

24 MR. MULE: You know, I think that that category of
25 who is a beneficiary, since it's not a defined term --

1 THE COURT: Right.

2 MR. MULE: -- we -- we had offered back in April --
3 we suggested that a beneficiary might be -- and now I'm
4 trying to remember the exact arguments. You got me on the
5 spot here and I'm forgetting, but there is an explanation
6 that I think does -- makes some sense, and it could be the
7 beneficiary (indiscernible). The beneficiaries could be like
8 the property owners, for instance. So --

11 MR. MULE: So, you have the landlord.

12 THE COURT: Right.

13 MR. MULE: The landlord is an hour away. The
14 landlord is the designated landlord.

15 THE COURT: Right, but not the owner.

18 THE COURT: I see.

19 MR. MULE: So you have Group 5 Associates, you have
20 3670 Route 112, LLC., and you have 9 4th Street, LLC. So --
21 I'm sorry, three. So those three entities own the property.
22 It's three different -- or four different lots that comprise
23 --

24 THE COURT: Okay.

25 MR. MULE: -- of (indiscernible) Coram. So in our

1 view, if you have a beneficiary that's undefined, it would be
2 these folks because they're the ones who benefitted from the
3 services.

4 THE COURT: Were there any conversations about
5 that?

6 MR. MULE: As far as I know, you know, I'm not
7 aware of any.

8 THE COURT: Okay. And, Mr. Gibbs, would you agree
9 with that?

10 MR. GIBBS: I'm sorry. What was that, Your Honor?

11 THE COURT: Conversations about what a beneficiary
12 is under the terms of the Vic agreement.

13 MR. GIBBS: Have we had conversation, Your Honor?

14 THE COURT: No.

15 MR. GIBBS: I'm sorry.

16 THE COURT: Did the parties who signed this
17 agreement, meaning the Narrow Way agreement, ever talk about
18 what it is to be a beneficiary?

19 MR. GIBBS: No, Your Honor. We've not found any
20 specific negotiations back and forth.

21 THE COURT: How are you going to prove it -- other
22 than making the legal argument, which you could win or lose,
23 how are you going to prove it at trial that Vics is the
24 beneficiary?

25 MR. GIBBS: Well, Your Honor --

1 THE COURT: In other words, who would testify?

2 MR. GIBBS: Well, Your Honor, it's through
3 discovery. So our main theory is that the way the term
4 beneficiary should be interpreted is that any person or
5 entity who is deriving a benefit from Narrow Way Realty
6 Limited is prohibited from competing. The concept that this
7 is designed to encapsulate is that as long as Siteone is
8 paying someone to rent a site on which to operate a nursery
9 and landscaping supply business, that person, that entity, or
10 anyone who is deriving a benefit or receiving that rent money
11 should also not be entitled to use that rent money to
12 compete.

13 THE COURT: And you don't think that if Vic was
14 standing right there and you wanted him to be bound, you
15 would have a slot that says, Vic, sign this in your
16 individual capacity?

17 MR. GIBBS: Well, Your Honor, if the -- if I had
18 drafted the agreement --

19 THE COURT: I get it, but you see my problem?

20 MR. GIBBS: Oh, certainly, Your Honor. Certainly.

21 THE COURT: Because it would seem to me if he's
22 standing there and it was intended to cover him, you would
23 have him sign it, and you did nothing. You -- not you you.

24 MR. GIBBS: That's right.

25 THE COURT: But you did not -- you did not do that.

1 Do you see how that might be a --

2 MR. GIBBS: That is --

3 THE COURT: -- what a litigator would call a bad
4 fact?

5 MR. GIBBS: It is not a great fact, Your Honor.

6 I'll readily admit that, and I think that's the reason we're
7 here, right? But he did -- I will point out, however, Your
8 Honor, Vic did sign the agreement.

9 Now he signed it in his capacity as the CEO of
10 Narrow Way Realty Limited, but nevertheless, his signature is
11 on the document. And based on the financial records that
12 we've received to date, they support our theory that the
13 money is flowing from Siteone to Narrow Way and to Vic, and
14 to Vic's family members.

15 THE COURT: I -- do you -- I mean, Nick owns these
16 companies.

17 MR. GIBBS: He owns it. He owns it.

18 THE COURT: Vic. I'm sorry, not Nick. I
19 apologize.

20 MR. MULE: So I mean, to me it's a preposterous
21 theory. The --

22 THE COURT: Well, forgetting that, though, but I'm
23 wondering -- we're going to get to his discovery --

24 MR. MULE: Yes.

25 THE COURT: -- and how much discovery you're

1 entitled to.

2 My point is to a certain degree, you can -- we'll
3 talk about this in more detail -- use discovery's overkill in
4 the sense that if they agree -- well, they obviously agree Vic
5 signed the agreement in his -- in the representative
6 capacity. The agreed Scapes is a competitor, and they agree
7 that Vic will be -- will receive the money that eventually
8 funnels through the corporate entities in which he is the
9 sole owner.

10 So the -- I assume -- and I assume he'll testify to
11 that. Is that right, Mr. Mule?

12 MR. MULE: Absolutely. I mean --

13 THE COURT: So, then other than the amount of -- if
14 you're saying, well, okay, we've been damaged by this
15 violation, that there is a global number to which you're
16 damaged for discovery purposes, in addition to that number,
17 what else do you need with regard to Vic?

18 MR. GIBBS: Well, to -- well, Your Honor, the other
19 issue that flows from this is, who -- what is the extent of
20 the term beneficiary? Who -- which of these other
21 individuals and entities are encapsulated within this concept
22 by virtue of receiving these rent payments, these, you know,
23 20-plus thousand dollar monthly rent payments from Siteone to
24 operate this business.

25 And so in terms of the financial information we're

1 seeking, that's what we're trying to understand, to flush out
2 the beneficiary.

3 THE COURT: So you're saying that it's conceivable
4 that -- assuming -- let's call Vic a signatory, and I mean,
5 that's sort of with a small S for the purposes of that
6 agreement, that people who didn't sign that agreement are
7 also bound?

8 MR. GIBBS: That is correct, Your Honor. So a
9 beneficiary -- and the reason -- the reason for that, Your
10 Honor, is the way that they structured the corporate entities
11 was specifically to try and solve for this issue so that Vic
12 can have the money in his pocket --

13 THE COURT: Is to try and what for this issue?
14 Soften?

15 MR. GIBBS: Is to try and solve for this very
16 issue. Vic did not sign the lease in his personal capacity.

17 THE COURT: But Don didn't sign it at all.

18 MR. GIBBS: Don did not sign it at all. However --

19 THE COURT: And neither did Vic.

20 MR. GIBBS: That's correct. However -- I'll make
21 two points on that.

22 First of all, Scape Supply, if in essence the money
23 is going into Vic's pocket, Vic's money -- is taking that
24 money from his pocket and putting it directly into Scapes,
25 our position is that Vic is prohibited from doing that. Vic

1 is not allowed to compete either personally --

2 THE COURT: No, I understand your position in that
3 regard.

4 MR. GIBBS: -- or if there were --

5 THE COURT: What I'm suggesting is for individuals
6 who did not sign the agreement, how can they be bound by it?

7 MR. GIBBS: Well, to be clear, Your Honor, and I
8 misspoke a bit, our breach of contract claim for breach of
9 the least restrictive covenant, we do not make that claim
10 against Don. The other claims against Don are that he is
11 personally participating in the running of this business,
12 contrary to his noncompete --

13 THE COURT: Well, no, that I understand. I
14 understand.

15 MR. GIBBS: And the other issues of
16 misappropriation (indiscernible) -- excuse me -- the unfair
17 competition, the civil conspiracy. So it's not limited to
18 our -- I just want to be clear.

19 THE COURT: Okay.

20 MR. GIBBS: Our case is not limited to just the
21 beneficiary issue. That's one of the key -- and that one is
22 so important because we're seeking the injunctive relief, and
23 so that's been a big focus of the case. But we do have 12
24 other claims against --

25 THE COURT: Okay.

1 MR. GIBBS: -- all of the defendants.

2 THE COURT: Okay. Mr. Mule, please continue.

3 MR. MULE: Yeah.

4 THE COURT: I know I cut you off.

5 MR. MULE: I mean, so you know, the whole
6 beneficiary is a -- it's a tremendous issue that we were
7 anticipating in light of -- in light of Judge Brown's
8 decision that, you know, the case move forward. I think it
9 has to have a -- be put on a rapid path in discovery. I
10 think we have to get completion rapidly. That was at Page 34
11 of his February 27th decision.

12 THE COURT: Let me help you both out. You don't
13 have to quote Judge Brown to me. Our experiences -- and
14 while we are friends, our experience or backgrounds are
15 considerably different, as is our understanding of
16 restrictive covenants and misappropriation law, that area of
17 the law. So I can handle it without --

18 MR. MULE: Okay, Your Honor.

19 THE COURT: -- oversight is not the right word.

20 MR. MULE: Yep.

21 THE COURT: But I don't -- it's not helpful to me.

22 MR. MULE: Right. So, you know, so the -- we had
23 anticipated that there would be really targeted discovery,
24 number one on that issue, and that is something that hasn't
25 occurred.

1 Number two, the whole basis of federal jurisdiction
2 is the Defend Trade Secrets Act, and Computer Fraud Abuse
3 Act. And we sent -- and it's in the -- it's in the record at
4 147-8, our June 28th, 2024 letter.

5 The case law is very clear that before engaging in
6 significant discovery on trade secret claims, there has to be
7 a reasonable specificity for trade secret claims. They've
8 got to identify what's the trade secret. They have to give
9 some type of --

10 THE COURT: Let me jump in. I understand
11 everything you're saying, and gripe is too pejorative and I
12 don't mean it like that. I understand your complaints with
13 their claim -- with their case. We're not here for that
14 right now, and if there is a jurisdictional argument, which
15 you're probably free to make at any time to Judge Brown who
16 may or may no refer to me, do that. I get the argument and
17 it's -- I don't know whether it's a winner or a loser, but
18 it's not crazy.

19 MR. MULE: Right. Well so I wanted to -- I wanted
20 to connect it to the discovery.

21 THE COURT: Okay. Okay.

22 MR. MULE: Your Honor. So --

23 THE COURT: Sure.

24 MR. MULE: -- and the reason is that, you know, in
25 Interrogatory Number 11, to Siteone, we gave them -- we gave

1 them the opportunity, basically, to describe the trade
2 secret, describe each trade secret, how it was
3 misappropriated, all the damages. Give us a sort of -- some
4 information on this. And we basically got the boiler plate.

5 And then the connection on discovery is, they
6 identify a couple people who they said might have knowledge
7 of this, and two of them were Girard Cassaro, Alex Trama, and
8 then Greg Thisis (ph). So a total of three individuals.

9 Now Siteone has claimed that they -- you know, they
10 gave you a nice chart, a million documents. I want to note
11 that 99.4 percent of those documents we can't even discuss
12 with our client based on the blanket attorney's eyes only
13 designation. That's a nonissue for another day, but I raise
14 it because the total production, when you exclude Don's email
15 account, which was his email account while he was employed by
16 Siteone, you have 1,075 documents. You have documents that
17 they hadn't given us. The site paths and all that. So we
18 don't even know where these documents come from, and there's
19 very limited discovery.

20 So we wanted the opportunity to say, all right,
21 let's -- let's move forward with practical discovery so we
22 could -- we feel we should be able to resolve this case very
23 quickly, because they haven't identified the two basis of
24 federal jurisdiction. We want to move on those basis, and we
25 want to have the opportunity since they didn't identify it

1 and provide responsive discovery.

2 We want to take the depositions of these folks and
3 say, what are you talking about here for trade secrets? You
4 have a January 16 claim -- January 16, 2023 they say Nick
5 threw out a computer. And then on that very same day, Mr.
6 Cassaro says, I discovered -- looked in the dumpster, it
7 wasn't there. Nick is still -- was still employed for
8 another month before they terminated. Well, if there's a
9 trade secret there, you would think they'd be jumping up and
10 down. They didn't do it.

11 They bring a lawsuit in March, and here we are 19
12 months later, we don't have a single deposition. We don't
13 have any dispersion of these defense trade secrets,
14 violations, Computer for Abuse Act that they -- we have in
15 the record, Computer for Abuse Act, and we've referred to a
16 website, a public website that anyone in the world could
17 reference. We asked for information. How did -- how did
18 anyone, Don, anyone -- any defendant basically break into --
19 the Computer for Abuse Act is supposed to be gates up/gates
20 down. We don't have that.

21 So in the discovery, we were looking for an
22 opportunity to do something practical, and we have not yet
23 had that opportunity.

24 Now in -- with respect to the discovery that
25 Siteone requested, they took a different approach. They

1 basically took the approach of, we don't have anything, so
2 we're going to search for everything. We're going to look
3 under rocks. We're going to go, you know, subpoena -- they
4 subpoenaed 14 document -- these are the non-parties, 14 non-
5 parties, another two non-parties for deposition, 16
6 subpoenas. It's like, you know, for a control of the
7 docketed discovery, we were anticipating, all right, let's
8 get some party discovery going on first.

9 And then on the party discovery -- and this is an
10 overall issue on all these motions -- what they did is,
11 instead of making reasonable requests, they basically said,
12 we want everything. We want all text messages. All
13 communications between Don and Vic. Don and -- Don and Vic.

14 You know, Nick was a member of Don's wedding party.
15 They have been friends for over 20 years. Don and Vic
16 obvious, father/son relationship. They have no basis to just
17 get everything. And so we were working on some ways to try
18 to get them. Anything that has to do with landscape related
19 business. We bent over backwards to try to come with that.

20 So what happened on these motions, September 10,
21 they filed all these motions. We came in as counsel for the
22 Vic defendants, I believe it was September 11, the day after.
23 So -- but the way it was left off with the Vic defendant was,
24 on August 1 -- I'm sorry, August 16, they provided proposed
25 search terms of what they planned to do, and unfortunately

1 when we came in, now we had to go from Rifkin Radler's e-
2 discovery platform to our e-discovery platform, and just two
3 weeks ago we were able to get -- you know, to get access.

4 So we're at a stage now where we could run these
5 searches. We could do these searches. And we're at the same
6 stage for Don with respect to anything landscape business
7 related, which we had offered in our supplemental responses
8 to provide.

9 So in our view of the discovery, they basically
10 took an approach, the best defense is an offense, and --

11 THE COURT: When you offer landscape related
12 services, because there's this notion of you can't be the
13 landlord to another landscaper, you -- that's included.

14 MR. MULE: Yeah. Exactly.

15 THE COURT: Okay.

16 MR. MULE: So what we did is -- and we're looking
17 to -- we're working with our e-discovery vendor, and we're
18 going to propose it to opposing counsel, is to basically come
19 up with terms that -- and I think they have a definition in
20 there, the asset purchase agreement. So we're going to plug
21 in these terms, but the idea of looking for everything would
22 be just, you know, something that they're not entitled to.

23 THE COURT: You mean looking -- you mean them
24 looking for everything?

25 MR. MULE: Yes, exactly.

1 THE COURT: Okay.

2 MR. MULE: So that's the approach we were looking
3 to take here, and which we have to take. And so I appreciate
4 you letting me give that overview from our perspective.

12 MR. GIBBS: Yes, Your Honor.

13 THE COURT: -- of other communications on it.

14 Let's start with -- let's do it first things first. Okay.

15 MR. GIBBS: Sounds good, Your Honor.

16 THE COURT: As a matter of background, in terms of
17 communications between Vic, Nick, and Don, do you have -- so
18 far you've gotten zero, or you've gotten something less than
19 what you want?

20 MR. GIBBS: Well, so I can tell you, Your Honor, we
21 have received -- I believe it is two emails between Don and
22 Vic on unrelated matters.

23 THE COURT: Okay.

24 MR. GIBBS: And that's all that --

25 THE COURT: Okay. So at least in theory, there's

1 more out there?

2 MR. GIBBS: Presumably these three -- and they've
3 admitted --

4 THE COURT: Okay.

5 MR. GIBBS: -- in their interrogatories that they
6 speak very frequently, Nick and Don.

7 THE COURT: No, no. I'm -- well, they are either
8 -- and I'm going to use the terms best friends with lower-
9 case B here. Best friends and father and son.

10 MR. GIBBS: That's right.

11 THE COURT: You are not getting what I think you
12 want, every communication they've ever had.

13 MR. GIBBS: Correct.

14 THE COURT: So the question -- but you are entitled
15 to something.

16 MR. GIBBS: Right.

17 THE COURT: Now, Mr. Mule, the question to you. In
18 terms of conducting searches, when you are producing these
19 things -- and there will be orders by the end of this
20 conference -- I am instructing, incase that's not clear, and
21 I'm not saying anybody's done anything wrong, you are to
22 review everything. You or somebody else from your firm --

23 MR. MULE: Yes.

24 THE COURT: -- to go through it. Nothing where --
25 it's just because your client said, well, this is all I have.

1 No. You're going to do it.

2 MR. MULE: Absolutely.

3 THE COURT: You're welcome, by the way. And we'll
4 handle it that way.

5 So that being said, in terms of Mr. Mule's offer of
6 anything that's, I guess you call it landscape related.

7 MR. MULE: Landscape related.

8 THE COURT: And that will include -- would include
9 landlord, landscape related. What is insufficient about
10 that?

11 MR. GIBBS: So, Your Honor, a couple of issues.
12 First of all -- and I think it's helpful to think about the
13 communications into these three buckets here. You have text
14 messages, you have emails, and you have call logs. And those
15 three things --

16 THE COURT: Well, we can back off because --

17 MR. GIBBS: Sure.

18 THE COURT: -- because I'm skeptical with your need
19 for call logs, because if they talk as much as I suspect they
20 -- if you've got a father and son in the same business for
21 decades, it's going to be infinite call logs, to the point
22 where --

23 MR. GIBBS: Well, two points on that, Your Honor.

24 THE COURT: Okay.

25 MR. GIBBS: So the first is, the most -- I don't

1 want to say the most important, but I would say some of the
2 most important call logs we're interested in are the ones
3 between Don and Nick. They no longer work together. And let
4 me be clear, Your Honor, the time period we're talking about
5 here is not going back to 2020. We're talking about -- we
6 have already narrowed this to the date of Don's termination
7 through the present, and so we're specifically looking at
8 communications where they're no longer in an employment --
9 employer/employee relationship.

10 And so the call logs, we want to know --

11 THE COURT: Okay.

12 MR. GIBBS: -- how often are Nick and Don speaking,
13 since they were terminated.

14 THE COURT: I see what you're -- he was still --
15 well, was he the Godfather or something, or best man, or some
16 kind of something? But okay, I'm skeptical. Your point's
17 not illogical though. I get it.

18 MR. GIBBS: Yes, Your Honor. So that's what we're
19 asking for are the call logs, just to show those -- and we're
20 really -- we're not asking for every single call, to see
21 every single call Don or Nick has ever made, but we are
22 looking for the calls among them because it's --

23 THE COURT: No, no, I understand that. I
24 understand that.

25 MR. GIBBS: -- critical just to understand what the

1 nature -- the extent of their communications with one
2 another.

3 THE COURT: Let's --

4 MR. GIBBS: We don't expect -- Your Honor, let me
5 just be really clear, Your Honor.

6 THE COURT: Yeah.

7 MR. GIBBS: We don't expect -- Don, Vic, and Nick,
8 they're smart guys. They're not going to be putting an email
9 sort of, you know, all of these, you know, smoking gun sort
10 of bad messages. We don't expect -- I mean, who knows. But
11 a lot of this we believe is going to be in-person meetings on
12 phone calls. And so in this case in particular, those call
13 logs to us are particularly relevant to our understanding.

14 THE COURT: Oh, no, no. Okay. I get -- I get all
15 that. Let's go back to my first question then.

16 MR. GIBBS: Sure.

17 THE COURT: Which is, why is the use of landscape
18 related communications insufficient?

19 MR. GIBBS: So the issue with that -- and you can
20 see this -- I think this is most clearly shown -- I'm
21 skeptical of how narrow this is going to be interpreted. And
22 the reason for that is, if you look at our motion to compel
23 with respect to the sort of group -- the remaining group I'll
24 call them, of Vic defendants, that would be motion -- Docket
25 Entry 157. They agreed in response to some of our RFPs

1 there, to provide communications that were related to the
2 landscape supply and nursery business on behalf of Narrow Way
3 2.

4 Their response, though -- the position they took,
5 though, in response, in their response brief to the Court was
6 that Narrow Way 2, all it is, is a property owner for two of
7 the competing properties, and therefore it's not a landscape,
8 nursery -- landscape and nursery supply business.

9 And to me, that doesn't make sense because if it's
10 a landlord that owns two properties that are intended to be
11 for the landscape supply and nursery business, then the
12 documents that that company would have are clearly -- they
13 would clearly fall under that umbrella, but they've taken the
14 position that it's not.

15 THE COURT: Well, I actually --

16 MR. GIBBS: And so that's all --

17 THE COURT: -- with respect to Narrow Way 2, which
18 I understand is the landlord of the competing operation,
19 right? Narrow Way 2?

20 MR. GIBBS: Well, so it appears -- and again, this
21 is why we need some of these documents that are on the list.
22 We think that Narrow Way 2 owns the land on which the
23 original competing business, on Yaphank --

24 THE COURT: Okay.

25 MR. GIBBS: -- in Yaphank, that it owns that

1 entity, and we think but we're not sure that it may own
2 Scapes, or be, you know, the parent company, or maybe owns
3 the Horseblock Road property.

4 THE COURT: Well, okay. I understand what you're
5 saying. The reason I'm asking is, I think some of this stuff
6 you can get them to admit and don't need discovery on,
7 because it's going to be -- it's kind of a binary answer.

8 MR. GIBBS: Well, we would hope so.

9 THE COURT: So --

10 MR. GIBBS: We would hope so.

11 THE COURT: -- but let's circle back, then, though
12 to the -- you say landscape related issues is insufficient
13 because you've got this experience regarding Narrow Way 2 --

14 MR. GIBBS: That's right, Your Honor.

15 THE COURT: -- as a property owner --

16 MR. GIBBS: Of two competing --

17 THE COURT: So would it then -- no, I understand.

18 MR. GIBBS: As long -- here's the thing. Let me --
19 let me be blunt with you, Your Honor. I don't have a perfect
20 description of exactly, you know, here's a, you know, four or
21 five words that should be encompassed in their search.

22 I think that -- two points. The first is, if as
23 they've described it generally, I think that is -- if it's
24 interpreted wrongly then that's an okay sort of concept to
25 drive the search for relevant documents.

1 I think, however, that especially with respect to
2 emails, search terms should be run through the emails,
3 appropriate search terms, that we've proposed.

4 THE COURT: I don't -- I don't disagree with that,
5 but that's --

6 MR. GIBBS: And then -- and then with the text
7 messages, I think those -- you know, because of the nature of
8 text messages, it's hard for them to really search for key
9 words, and so I think those have to be reviewed individually
10 --

11 THE COURT: Oh, I agree. They --

12 MR. GIBBS: -- with the concept --

13 THE COURT: -- they do have to be reviewed
14 individually. But you're not going to --

15 MR. GIBBS: That's right.

16 THE COURT: -- review them individually.

17 MR. GIBBS: Correct.

18 THE COURT: He is.

19 MR. GIBBS: Correct. Correct, Your Honor.
20 Exactly.

21 THE COURT: So -- no, no, I don't have a problem
22 with that. Well, let me ask you this, because I'm not
23 obviously against you having a list of custodials and a list
24 of search terms, but then does it make sense to put this over
25 until you can agree on that or not, because my goal today was

1 to rule on all of this and get off the docket.

2 I could -- what I don't want is to issue rulings
3 now and then have you back here in two weeks because you
4 couldn't agree on the search terms. So where are we on that?

5 MR. GIBBS: So I have a list of search terms. I
6 can -- I mean, I have a written list here I can propose, but
7 --

8 THE COURT: Have you -- have you shared them with
9 your adversary yet?

10 MR. GIBBS: So I've shared them in a letter. I did
11 not give them the list today. It's almost identical to the
12 one that was in the letter, I think. We just sort of split
13 it up among the defendants a little better. But -- so sort
14 of. They've seen some; some or most of it.

15 THE COURT: Do you have it with you?

16 MR. GIBBS: I do. I do, Your Honor.

17 THE COURT: You want to take a 15-minute break, Mr.
18 Mule, and you can take a look and say, oh, this is the same,
19 it's okay, or not, and then see if we can incorporate that
20 into the ruling?

21 MR. MULE: We can do that.

22 THE COURT: Yeah, I didn't hear you.

23 MR. MULE: Yes, Your Honor. We could do that.

24 THE COURT: All right. Why don't you give it to
25 him? We'll take 15 minutes.

1 MR. GIBBS: Thank you, Your Honor.

2 (Recess from 11:41 a.m. to 11:58 a.m.)

3 THE COURT: Okay, did we have a conversation about
4 custodians and search terms?

5 MR. GIBBS: Yes, Your Honor, we did.

6 THE COURT: And how did that go?

7 MR. GIBBS: It went well, Your Honor. It went
8 well.

9 THE COURT: Okay.

10 MR. GIBBS: I'd say they are agreeable. I don't
11 want to speak -- put words in their mouth, but they're
12 agreeable to the terms that we provided as -- in the way we
13 described it is in essence, sort of a starting point. We're
14 not saying you've got to review every single document on the
15 --

16 THE COURT: Okay.

17 MR. GIBBS: -- the hits on these terms, but see
18 what comes back and then we can negotiate to, you know,
19 what's a reasonable set to review.

20 THE COURT: Okay. Mr. Mule?

21 MR. MULE: Yeah. With one exception, was
22 Horseblock Road, which -- so basically they have requested
23 terms. They want a hit list, and we believe these terms are
24 very broad because they're just names.

25 THE COURT: Right.

1 MR. MULE: But we'll go through, we'll give them a
2 hit list, and then -- with the exception of Horseblock, and
3 then -- and then our expectation is that we would have these
4 reviewed in connection with landscape related --

5 THE COURT: Yeah.

6 MR. MULE: -- business.

7 THE COURT: I think that makes sense. So I hate to
8 ask this. Tell me about Horseblock. What's the sticking
9 point?

10 MR. MULE: So Horseblock is a -- you know, the
11 approach taken, sue everyone, every entity that's owned by
12 Vic or Don. So Horseblock is another piece of property
13 that's owned by -- that's owned by Vic in Yapank, and it's
14 basically a dormant piece of property that he owns, and in
15 our view it's not a defendant in the action.

16 THE COURT: Forget that it's not a defendant in the
17 action. Is he plan to develop it for nursery related --
18 landscaping related purposes?

19 MR. MULE: If he does in the future, I don't know
20 at this point. All I know is, they're operating at Long
21 Island Avenue, and that's where they're operating.

22 THE COURT: I get that, but to the degree Long
23 Island Avenue is relevant and Horseblock isn't fully built
24 out yet, that doesn't make it irrelevant.

25 MR. MULE: As far as I know, there's no --

1 THE COURT: As far -- forget the lawyer. I don't
2 want to hear -- as far -- unless you can tell me, my client
3 said no, he's building an amusement park there, then it's on
4 the table. Okay.

5 Hold on one second because I've got to start
6 drafting orders.

7 (Pause)

8 THE COURT: Those terms are for emails and
9 documents, but not text, I assume. Is that fair to say, or
10 --

11 MR. GIBBS: Correct, Your Honor. That's our
12 request.

13 THE COURT: Well, let Mr. Mule --

14 MR. MULE: I thought it was for all. We were --
15 the expectation was --

16 THE COURT: Well, my concern is, you can't search
17 texts. That's what I'm -- that's where my thinking is, so
18 that it would be for documents which can -- you can search
19 for, and emails similarly. But then for the texts, you're
20 going to have to -- Mr. Mule, you're going to have to read
21 them and pull out responsive stuff. Okay.

22 (Pause)

23 THE COURT: The Horse -- what's it called?
24 Horseblock?

25 MR. MULE: Horseblock.

1 THE COURT: Okay.

2 MR. MULE: I don't know if it's one word or two.

3 MR. GIBBS: I think it's one. Yeah, it's
4 Horseblock.

5 THE COURT: You'll know what it means.

6 (Pause)

7 THE COURT: Okay. That's the first bucket.

8 The second bucket now is, refuse to provide coms --
9 I'm assuming communications -- with former Siteone employees,
10 Siteone customers, Rose Casper, and Janet Demano. Those two
11 individuals were described in the motion papers.

12 All right. Mr. Gibbs, why don't you tell me?

13 MR. GIBBS: Yes, Your Honor. I think with respect
14 to the employees, they've agreed to provide some limited
15 subsets of those documents, particularly if I'm
16 characterizing this correctly, basically documents discussing
17 the employees coming to work for Scapes, which I think is
18 sort of -- it's an appropriate limitation at this point.

19 THE COURT: Is an appropriate limitation.

20 MR. GIBBS: Is an appropriate limitation.

21 THE COURT: Okay.

22 MR. GIBBS: We -- our main gripe with that, Your
23 Honor, is that we just don't -- we haven't gotten the
24 documents.

25 THE COURT: Okay.

1 MR. GIBBS: We haven't gotten the documents.

2 With respect to customers, it's a similar issue. I
3 don't think -- I'd have to -- I'd have to go back and look at
4 my more detailed notes. I think they agreed to provide some
5 of that. What we're mostly interested in with the customers
6 is the time period, you know, between when Don is terminated
7 in October, through, you know, probably, you know, we'll say
8 the end of the summer last year, approximately, because that
9 would be the time when they would be actively discussing the
10 targeting of the Siteone customers.

11 I know that a lot of these customers have come over
12 now and they're active customers.

13 THE COURT: Come over to Scapes?

14 MR. GIBBS: Have come to Scapes. That's right,
15 Your Honor.

16 THE COURT: Okay.

17 MR. GIBBS: And so that may be -- you know, there
18 may be, you know, a million documents that hit on that.
19 We're mostly interested in understanding, you know, when
20 those solicitations occurred.

21 THE COURT: Okay, you know what? Let's slow down
22 because I'm going to type as we go.

23 First, with respect to Siteone employees, you said
24 there's an agreement --

25 MR. GIBBS: Mischaracterized, but I think --

1 THE COURT: No, no, no. We'll get to that, but --

2 MR. GIBBS: Yes, sir.

3 THE COURT: -- communications about coming to work
4 at Scapes.

5 MR. GIBBS: Correct, Your Honor. Leaving Siteone
6 and coming to Scapes.

7 (Pause)

8 THE COURT: Now -- and, okay. And you had said the
9 issue was just one of timing.

10 Mr. Mule, is your understanding consistent with Mr.
11 Gibbs' or something different on that one --

12 MR. MULE: This is --

13 THE COURT: -- sub-bucket.

14 MR. MULE: -- for the employees?

15 THE COURT: The employees. Yes.

16 MR. MULE: Hold on a second. We had agreed to
17 conduct a reasonable search for responsive documents relating
18 to Siteone and its business, customers, or clients, and
19 communications related to leaving Siteone to work for Scapes.

20 THE COURT: So that's both with respect to
21 employees and customers? Or not? Like, I'm not -- you sort
22 of made a larger bucket.

23 MR. MULE: Yeah. I think with respect to those
24 employees --

25 THE COURT: Right.

1 MR. MULE: -- so looking for communications
2 referring to the employees, Dale Nash, Antonio Vios Garcia,
3 Jose Ruby, Jorge Suarez Florez and Juan Suarez Florez, and
4 looking at that pocket of those communications which relate
5 to Siteone, its business, customers, or clients, or
6 communications relating to those particular employees leaving
7 Siteone to work for Scapes.

8 THE COURT: Okay, so --

9 MR. GIBBS: And on that point I would say, we are
10 not agreeable to the limitation just to those specific
11 employees. Other employees --

12 THE COURT: Well, that was my next question.

13 MR. GIBBS: -- I mean, as recently as July of this
14 year, we had someone leave and go over there. So it's -- we
15 don't want to limit it to just those named individuals.

16 THE COURT: Okay.

17 MR. GIBBS: Just any former Siteone --

18 MR. MULE: We agree, including but not limited to.
19 So I believe we identified in our responses, 19 Scapes
20 employees who were, you know, former Siteone or Garden
21 Department --

22 THE COURT: Here's what I'm doing. I'm just
23 putting in Siteone employees. I'm not limiting it at all.
24 That being said, you'll get some bucket of documents, Mr.
25 Gibbs. If you think someone is missing --

1 MR. MULE: Right.

2 THE COURT: -- supplement the list and ask it.

3 MR. MULE: Correct.

4 THE COURT: You know, but I don't think this should
5 be the hill we all die on.

6 So you produce employee communications about
7 leaving Siteone to -- and then going to Scapes.

8 In terms of customers, what's next?

9 MR. GIBBS: So for customers, Your Honor, we want
10 any communications with customers, I would say starting on
11 October 19th of 2020. I don't know if you want to talk about
12 time --

13 THE COURT: You know, I haven't -- I'm sorry. I'm
14 sorry to cut you off. I haven't put dates in any of this
15 yet. Is this the first one where the dates matter, or no?

16 MR. GIBBS: I mean, I think all these -- I think
17 putting the dates in here, I think is going to make this much
18 simpler.

19 THE COURT: No, I agree. So with respect to the
20 communications --

21 MR. GIBBS: I think on your -- I think all of these
22 really -- at this point, we can agree to October 19th of 2022
23 as the start date, because that's the day that Don was
24 terminated so --

25 THE COURT: Right. Until the present, or what?

1 MR. GIBBS: Yes, Your Honor, until the present. I
2 mean, I think with the customers, depending on, you know,
3 sort of the volume of the documents -- and we can, you know,
4 negotiation this once we see what the volume is, but I mean,
5 I think through the present is appropriate, but we will
6 ultimately further limit that, because what we're most
7 interested in are those earlier solicitations.

8 Now, some of the, you know, subsequent
9 communications may become relevant more on a damages piece,
10 but I think initially we're --

11 THE COURT: Okay. What I'm going to do is from --
12 say, unless otherwise indicated from October 19th, 2022 to
13 the present, and we'll keep going.

14 (Pause)

15 THE COURT: My computer is freezing. Hold on one
16 second.

17 (Pause)

18 THE COURT: Mr. Gibbs, as to customers -- the dates
19 you've just given me, what is it you want?

20 MR. GIBBS: So October 19th, 2022.

21 THE COURT: Right.

22 MR. GIBBS: And we can initially start through the
23 present.

24 THE COURT: Right, but what are the documents? The
25 substance? How would you describe the customer documents

1 that you're looking for?

2 MR. GIBBS: Oh, I'm sorry, Your Honor. Those will
3 be focused on the solicitation of the customers to go to
4 Scapes. To leave -- leave Siteone and/or go to Scapes.

5 THE COURT: Okay. So --

6 MR. MULE: If I may? I'm sort of losing track of
7 what motion we're on, what --

8 THE COURT: No, we're not doing it that way. We're
9 on the summary of motions to compel, which is Page 7 of his
10 handout.

11 MR. MULE: What document?

12 THE COURT: There's the first column --

13 MR. MULE: Okay.

14 THE COURT: -- on the left. We did the -- there's
15 a subheading, Nick and Don. We're now under the next
16 subheading, refuse to provide coms with. We just did Siteone
17 customer -- Siteone employees, pardon me, and we're now up to
18 Siteone customers.

19 MR. MULE: All right. I'm not sure what -- if I
20 could -- you could tell me what document requests those refer
21 to so I can keep track of this?

22 THE COURT: Okay. Mr. Mule, he handed you an
23 eight-page handout at the beginning of this, right?

24 MR. MULE: Yep.

25 THE COURT: Turn to Page 7.

1 MR. MULE: I see. Well, what it does not have,
2 Your Honor, is the document --

3 THE COURT: No, it doesn't, which is why I asked at
4 the beginning, does this cover everything --

5 MR. MULE: It covers the topics --

6 THE COURT: Topically.

7 MR. MULE: -- but --

8 THE COURT: So I'm going to give you an order that
9 doesn't refer to things by docket number. In other words,
10 I'm going to essentially grant all the motions in part and
11 deny them in part, and then give you a list of what you need
12 to produce.

13 MR. MULE: Okay. I just need to --

14 THE COURT: So we're somewhat departing from the
15 request in that sense.

16 MR. MULE: I'm just asking if Mr. Gibbs can give me
17 the reference to the document request so I can see where it
18 is in my papers.

19 THE COURT: He can, but you're -- just so you know,
20 you're getting an order that's going to tell you what to
21 produce regardless of what it's connected to. Obviously, it
22 should be connected.

23 MR. MULE: I understand.

24 THE COURT: But we got -- this has got to be
25 streamlined.

1 MR. MULE: Yep.

2 THE COURT: So I don't want to put form over
3 substance. So with respect to the Siteone customers, Mr.
4 Gibbs says he wants solicitation to those customers during
5 the time period indicated. What is your response to that?

6 MR. MULE: If I have a document request, I can
7 identify what our response is, because I don't know where it
8 is in my documents, because I have gone through this, you
9 know, my --

10 THE COURT: Mr. Gibbs, do you have that so that we
11 can kind of move this along?

12 MR. GIBBS: Let's see, Your Honor. Those are --
13 let me see. Those are -- I've sort of had them listed all
14 together, so I'd have to go back and look at the actual RFPs
15 themselves. We have several. They're RFP, so sort of for
16 Vic -- and then the numbering is largely the same between the
17 individual defendants. But it would be RFPs 38 to 42, RFPs 2
18 to 3, 11 to 26, and 31 to 32. I believe as a general
19 grouping of those.

20 THE COURT: Okay.

21 MR. MULE: So, Your Honor, with respect to this,
22 I'm not -- you know, for Vic it wasn't, at least as far as I
23 can see, not really set forth. You know, there were customer
24 lists that they requested, and we had an objection as to
25 customer list, particularly at this time, and the reason was

1 that, you know, until such time as they -- it's sort of a
2 cart before the horse request. You know, they should
3 disclose the trade secret with specificity before we're
4 getting involved in --

5 THE COURT: Okay. That objection is overruled.

6 What's next?

7 MR. MULE: Okay. So, I don't know exactly what
8 other requests for -- precise -- what that request is.

9 THE COURT: Okay. He just said, I'm telling you
10 now, we are -- I'm not standing around all the niceties of
11 this. I'm making a ruling. He wants all the customer
12 solicitations starting in -- on October 19th, 2022.

13 MR. MULE: So the names of all customers that have
14 been solicited?

15 THE COURT: Presumably they're -- no.

16 MR. GIBBS: Their communications.

17 THE COURT: He said the solicitations. Presumably,
18 they're emails or if you did it like -- I'm envisioning
19 electronic blast. The truth is, I don't know what your
20 customer does.

21 MR. GIBBS: Text message, emails. However --
22 whatever form they --

23 THE COURT: I can't imagine they're sending text.
24 That means they'd need everybody's phone number. But --

25 MR. GIBBS: I believe there are text messages, Your

1 Honor. I have seen --

2 MR. MULE: The idea of us going through and having
3 a search of -- you know, if they do text, I don't know. But
4 if they do text with --

5 THE COURT: Well, let me ask you a question, Mr.
6 Gibbs.

7 MR. MULE: -- hundreds of customers --

8 THE COURT: What -- if you got a sample, let's say
9 what they did on October 30th of 2022, they sent out a mass
10 email sort of blitz --

11 MR. GIBBS: I can show you one. I can show you one
12 right now.

13 THE COURT: No, but I'm saying, why --

14 MR. GIBBS: That would be --

15 THE COURT: -- I don't think they would send one to
16 just one, so they would have sent it to -- I assume they keep
17 some kind of list, right?

18 MR. GIBBS: Yes. Yes, Your Honor.

19 THE COURT: And they would have hit enter and it
20 would have gone to the whole list. So why isn't just having
21 the one sufficient on that date as a sampling?

22 MR. GIBBS: Well, so, Your Honor, it's not clear
23 whether it's sent out individually, and I would expect early
24 on, before the business is really up and operating, these are
25 -- these are one-off communications, probably targeted to,

1 you know, our top, you know, 20 clients for example.

2 And so those initial communications, I don't expect
3 that's going to be so sophisticated to be like a -- you know,
4 going through, you know, Mail Champ, and they've got a very
5 formal sort of solicitation email. I think it's going to be
6 pretty informal stuff. It's going to be text messages and
7 emails saying, hey, we're now opening Scapes down the road.
8 Come see us. You know, we'll get the best prices. Whatever
9 it is they said, I don't know. But I don't think it's going
10 to be that formal, that organized. Especially in the
11 beginning.

12 THE COURT: Well, then if that's the case, like
13 we're opening our doors, why don't you come see us, then you
14 need to limit the dates more than we've establish --

15 MR. GIBBS: Yes.

16 THE COURT: -- I guess it's two years now.

17 MR. GIBBS: Yeah, we can certainly limit the dates,
18 Your Honor. I would say the beginning is October 19th of
19 2022, and we can say through August of last year.

20 THE COURT: Okay.

21 MR. GIBBS: I think that would --

22 THE COURT: We're not doing that. You're going to
23 look for the first 60 days of solicitations that were sent to
24 clients from August 19th to December 19th.

25 MR. GIBBS: Well, Your Honor, just one thing --

1 THE COURT: And then if you get anything, you can

2 --

3 MR. GIBBS: Well, that's -- they had not opened the
4 business at that point, Your Honor. Let me be really clear.

5 So in October, that's when Don was terminated, but
6 they don't start actually running the business until 2023.

7 So I'd ask --

8 THE COURT: When in December 2023?

9 MR. GIBBS: I would say February of 2023 is really
10 when they started.

11 THE COURT: Okay. Mr. Mule, in terms of open-door
12 date, is that February 2023?

13 MR. MULE: Scapes was not even formed until April 9
14 of '23.

15 THE COURT: When did -- I don't care about the,
16 quote, niceties. When did the doors open?

17 MR. MULE: I suspect it's around that time, it's
18 the same time.

19 THE COURT: What, April 2023, or --

20 MR. MILMAN: We didn't represent them at that time,
21 so we really don't have all that factual background, but I
22 would -- I would say that that date is probably a fair
23 guesstimate of when they opened.

24 THE COURT: Okay. I'm giving you a 60-day window.

25 MR. MILMAN: Fine.

1 THE COURT: You choose the dates because they don't
2 know.

3 MR. GIBBS: Okay, Your Honor. I would say --

4 THE COURT: What date? You pick dates.

5 MR. GIBBS: -- April and May of 2023.

6 THE COURT: Hold on. April and May.

7 MR. MULE: And, Your Honor, is this going to be
8 limited to emails? I could do that. I can't imagine --

9 THE COURT: No, because I think -- they could be
10 old-school and they could use letters with stamps. I don't
11 know.

12 MR. MULE: Emails and letters.

13 THE COURT: Whatever that's -- or -- no, if they're
14 texts, you've got to ask them. If he says, oh no, we did it
15 by text because we have this new fangled way, then you've got
16 to produce the texts.

17 MR. GIBBS: And I do --

18 THE COURT: So I'm not going to limit it that way.
19 You've got to talk to your client and figure out what he did.

20 MR. MULE: Okay.

21 THE COURT: They did.

22 MR. MULE: Now -- and solicitation, you're talking
23 about a mass solicitation.

24 THE COURT: No, not necessarily. Your -- they
25 could have started this business because Don's best friend is

1 a landscaper. He's like, if you open a store, I'm going to
2 use all your stuff, and he may have just sent him a one-off
3 thing because they're pals. You've got to ask your client
4 and figure it out. You can't do this without your client
5 sitting with you the whole time. Again, you're welcome. All
6 right?

7 (Pause)

8 THE COURT: You said -- did you say April to May
9 2023?

10 MR. GIBBS: Correct, Your Honor.

11 (Pause)

12 MR. MULE: One other question, Your Honor, which I
13 don't really know --

14 THE COURT: You can ask it, but just let me finish
15 typing before you do.

16 MR. MULE: Okay.

17 (Pause)

18 THE COURT: Okay, Mr. Mule.

19 MR. MULE: Yeah. I wanted to know, are we going to
20 get a list of the Siteone customers that we're to look for?

21 THE COURT: No, you've got to talk to your client
22 and ask him what he did. I mean, yes, you can give the list
23 to help move this along, and you should, but you responding
24 to his list does not absolve you of your responsibility.

25 You've got to go to your client and say, this is where we

1 are. Go look through your -- whatever they -- emails,
2 whatever they keep, and this is the time frame, so it's
3 narrow. It can't be that many in a 60-day period.

4 MR. MULE: Okay.

5 THE COURT: And then depending on what you get, if
6 we need to expand it, we can talk about it, but, let's see.

7 MR. GIBBS: And for the record we have -- we have
8 provided a full customer list. A full customer --

9 THE COURT: Okay.

10 MR. GIBBS: -- every single customer.

11 THE COURT: You mean your -- your customer list?

12 MR. GIBBS: We have produced --

13 THE COURT: Okay.

14 MR. GIBBS: -- our entire customer list.

15 THE COURT: Oh, no, that's worth putting on the
16 record. Okay.

17 MR. GIBBS: Sorted by revenue, contact information.

18 MR. MULE: One other thing.

19 THE COURT: Yeah.

20 MR. MULE: I have to -- if I'm going to identify
21 customers, I don't want them to come to me and say, hey, we
22 gave you a customer list that's attorney's eyes only, you
23 can't disclose the names of those customers on the list. I
24 have to be able to talk to the client of -- and be able to
25 understand --

1 THE COURT: Well, he's got to work --

2 MR. MULE: -- hey, were these customers?

3 MR. GIBBS: Oh, sure. Sure. Of course.

4 THE COURT: Okay. You know, you can do that and
5 keep it confidential with your clients, but that's sensible.

6 MR. GIBBS: Yeah. I would think that, you know, we
7 give them a customer list and they're saying, hey, did you do
8 work with Fairfield Properties? You know, did you do work
9 for so-and-so. Going through that list and talking to them
10 is not -- in our view, that's not going to break attorney's
11 eyes only. It would be attorney's eyes only if they said,
12 hey, review this entire thousand-page customer list, take a
13 copy home with you, I mean, that's -- you know, that's where
14 we would have an issue. But just simply talking through
15 customers I think is going to be necessarily.

16 THE COURT: I'll just add a line to that effect.

17 (Pause)

18 THE COURT: Okay, I have another case on at 12:15,
19 so you guys need to take a breather. If you're here on the
20 12:15, why don't you just come up to the bench, please?

21 (Recess from 12:21 p.m. to 12:29 p.m.)

22 THE COURT: Okay, we're back on the record. The
23 next two topics or sub-sub-topics are communications
24 regarding Rose Casper and Janet Demano.

25 MR. GIBBS: Correct, Your Honor.

1 THE COURT: All right, what's the story?

2 MR. GIBBS: The two of them, we understand, are
3 bookkeepers, have been for some time for -- I think it's Don
4 and Vic, and maybe some or all of their entities. It's not
5 entirely clear. But we're looking particularly from them,
6 you know, communications about the competing business and
7 the, you know, financial transactions. You know, to the
8 extent they're working on --

9 THE COURT: Well, you've got to drill down a little
10 bit more than that in the sense that you don't need to prove
11 competing business. They admit that. They're competing at
12 Scapes.

13 MR. GIBBS: That's right.

14 THE COURT: So what can two bookkeepers provide to
15 you?

16 MR. GIBBS: Primarily about the finances. And
17 these perhaps should have belong better in the financial
18 information category. But what we're really looking for are,
19 you know, communications or records from them that relate to
20 the competing business or to the, you know, the defendant
21 corporate entities.

22 THE COURT: That relates to the competing business.
23 They're bookkeepers. Presumably, that means everything they
24 touched.

25 MR. GIBBS: Well, it's not clear. I don't know

1 that for sure. I don't --

2 THE COURT: Well, let me flip this. You're not
3 getting everything they touched, so tell me something
4 reasonable --

5 MR. GIBBS: That's right.

6 THE COURT: -- that you want. I don't think you
7 want everything they touched.

8 MR. GIBBS: No, Your Honor. What we want really,
9 we're looking for are communications or documents that relate
10 to the finances of the competing business. And so, for
11 example --

12 THE COURT: Okay.

13 MR. GIBBS: -- if they are -- if they're doing the
14 books for the competing businesses, they're talking about,
15 you know, the ledger entries and things like that, that's the
16 sort of thing we're looking for. We don't expect them to
17 have documents or communications about customers and about --

18 THE COURT: Yeah, but you're -- what you're -- the
19 level of -- so you want all of their operating accounts and
20 ledgers.

21 MR. GIBBS: That is ultimately what we're getting
22 at here, and in this next column. We're looking for -- to
23 get a financial picture of the entities, and in particular --
24 particular on the individual defendants, particularly with
25 respect to Vic, to understand, in other words, where the

1 money from Siteone is going. And so it seems like the
2 bookkeeping records are going to probably have a pretty good
3 explanation of that piece, and so that's why we're focused on
4 the bookkeeping records.

5 THE COURT: I guess my confusion here is, you're
6 going to say you paid for the business, \$34 million, and you
7 got duped because they went out and competed. Whether -- the
8 entity that's going to owe you the \$34 million or whatever
9 the damage is, are going to be the entities that are in
10 violation of the agreements or committed some other tortuous
11 act.

12 MR. GIBBS: Correct.

13 THE COURT: Right? So why do the granular nuts and
14 bolts of their business matter? It's not going to affect
15 their liability. Assuming you get a total number of what the
16 business was. They are now doing \$20 million a year or
17 whatever it is. I don't understand why you need the
18 information at this granular level.

19 MR. GIBBS: Yes, Your Honor, and the purpose is,
20 again, to understand the flow --

21 THE COURT: Yeah, but this proctological exam
22 you're trying to give all these entities I don't think helps
23 your case. In other words, I don't know who's going to win
24 this case, but in terms of relevance, it seems to me you need
25 the amount you were damaged, assuming liability for the

1 purpose of these requests, and that's all you need.

2 MR. GIBBS: Yeah, and so if that's what they have,
3 Your Honor, if those are the types of records that they have,
4 which, again, I'm not sure. I don't know exactly who they're
5 doing bookkeeping services for, the nature or extent of those
6 services. So that's what we're ultimately after is to
7 understand the nature of those services and whether --

8 THE COURT: Yeah, but --

9 MR. GIBBS: I can't even say for sure they're
10 involved at this juncture.

11 THE COURT: Well, they may not be, but my point is
12 I think you may be asking the wrong question and seeking too
13 much --

14 MR. GIBBS: Yes, Your Honor.

15 THE COURT: -- in an effort to belt and suspenders
16 everything.

17 MR. GIBBS: Well, we can certainly -- if Your Honor
18 believes that that is over broad, we could withdraw that
19 portion of the request and we can really focus on the other
20 things --

21 THE COURT: Okay, well --

22 MR. GIBBS: -- that we've identified, which I think
23 go more to the meat.

24 THE COURT: Mr. Mule, did you hear my colloquy with
25 your adversary?

1 MR. MULE: I heard the trial (indiscernible).

2 THE COURT: Okay, here's the situation. With
3 respect -- they're seeking documents regarding bookkeeping
4 entries, to which I think it's too granular a request. I'm
5 going to deny the motion with respect to those with the
6 understanding that they are entitled to know the amount of
7 business your client is doing, right? So if we assume that
8 there's been some kind of violation or tortious conduct, that
9 would be the damage amount. They're entitled not just to a
10 piece of paper with a number on it, but some kind of backup
11 for that.

12 I am not going to give them every kind of backup
13 for that. It's too much. It's not proportional to the needs
14 of the case. So what I'm telling you is, you're going to get
15 a revised request, or perhaps you can even talk about it,
16 maybe even after you talk to your client, Mr. Mule, about,
17 look, the judge said you've got to give them a number -- the
18 gross number for the business you're doing, whether it's on a
19 yearly basis or a -- some kind of basis that makes accounting
20 sense, to the point where they can use it for a damage
21 calculation so that -- in other words, your client's going to
22 have to make an admission so that the Court can save your
23 client producing reams and reams of documents that might
24 answer Mr. Gibbs' question, but I think it's too much. Do
25 you see what I'm saying?

1 MR. MULE: Yes, sir.

2 THE COURT: Okay. So you'll talk to your client
3 about that and come up with a way to get a number.

4 MR. MULE: Okay.

5 THE COURT: Okay.

6 MR. MILMAN: Just --

7 THE COURT: Hold on one second.

8 MR. MILMAN: Just for the record, Your Honor.

9 THE COURT: Yeah.

10 MR. MILMAN: We're not sure that either one of
11 these are actually employees of Scapes doing Scapes'
12 bookkeeping. These are two --

13 THE COURT: Well, I've denied the motion with
14 respect to that, so it doesn't matter.

15 MR. MILMAN: Okay. Yeah. Okay.

16 (Pause)

17 THE COURT: Are we working on a complaint or an
18 amended complaint in this case?

19 MR. GIBBS: Amended complaint, Your Honor.

20 THE COURT: Yeah, that's what I thought.

21 (Pause)

22 THE COURT: For the sake of clarity, Mr. Mule, if
23 you're unable to come up with a number that demonstrates --
24 let's call it the yearly business they do, he's going to be
25 back here. I'm going to make you produce a whole lot of

1 stuff that A, you don't want to produce because you might
2 think it's private, but, B, you don't want to spend time
3 looking at to produce to get us right back to where we
4 started. So consider that when talking to your client.

5 Okay. Next bucket are -- is financial information.

6 These, I'm a little unsure of because some of the opposition
7 said, well, this is the only bank we do business with, and
8 you've got the subpoena and all of that.

9 MR. GIBBS: Well, that's -- well, let me -- to be
10 clear, Your Honor.

11 THE COURT: Okay.

12 MR. GIBBS: So the way that the response is -- and
13 I don't want to be, you know, hyper-technical here, but the
14 responses, the way they're worded, it says Vic does business
15 with American Community Bank.

16 THE COURT: Right.

17 MR. GIBBS: But it doesn't say, this is the only
18 bank.

19 THE COURT: No, but then in the papers --

20 MR. GIBBS: So if it is --

21 THE COURT: -- they said --

22 MR. GIBBS: -- if that's the only one --

23 THE COURT: -- they followed up on the papers and
24 said that. Or am I wrong? Maybe I'm wrong.

25 MR. MULE: Right. You're correct, Your Honor.

1 And also, the request said identify each bank.

2 THE COURT: Okay. Whatever.

3 MR. GIBBS: Yes.

4 THE COURT: The only bank your guys -- your guys --
5 the defendant do business with is American Community Bank,
6 yes or no?

7 MR. GIBBS: I believe that's the bank. Yeah.

8 THE COURT: Yes.

9 MR. GIBBS: And we got -- that was for this. Now
10 Nick has completely objected and has refused to provide that
11 information.

12 THE COURT: Okay. Why --

13 MR. GIBBS: Nick Giordano.

14 MR. MULE: That's for -- in his individual banking.
15 Basically, you know, they learned -- and this is before, but
16 if you are -- if they identify a bank, the next thing that's
17 going to come is they're going to subpoena his personal
18 banking information.

19 THE COURT: Well, they're definitely going to do
20 that. So for Nick, who's an individual and doesn't have an
21 ownership in any of these corporate entities --

22 MR. GIBBS: Well, he did. He did, Your Honor.

23 Initially, he had an ownership interest in Scapes. We don't
24 know when or the nature of that ownership, the nature of his
25 financial contribution, or -- we don't know any of it. But

1 we do know that they've acknowledged in their papers that
2 Nick at some point was an owner of Scapes.

3 THE COURT: Okay. And if you have the banking
4 information from Scapes that shows what was given to Nick,
5 then don't you have what you need?

6 MR. GIBBS: Well, we don't have it. So we haven't
7 gotten to Scapes. So they've also refused to provide any of
8 the banking or financial information from Scapes. So we
9 don't have it. So --

10 THE COURT: Okay. Let --

11 MR. GIBBS: -- perhaps you're right.

12 THE COURT: Well, if -- let's assume you get
13 something about Scapes.

14 MR. GIBBS: Okay.

15 THE COURT: Bank documents, because that's the
16 competing entity.

17 MR. GIBBS: Yes, Your Honor.

18 THE COURT: That account will have money in, money
19 out, right? And probably -- and amounts of nothing else, I
20 would assume. Why doesn't that give you everything you need?

21 MR. GIBBS: Well, I think that for Nick, we can
22 narrow that to a pretty truncated time line, you know,
23 particularly in the lead-up to the opening of the business,
24 because our perception based on the facts that we know is
25 that, you know, it was relatively disorganized early on.

1 And so I don't know -- you know, the Scapes -- the
2 corporate entity, wasn't formed until April of 2023. But
3 they had already started opening the business in January of
4 2023. Nick was going to the site and physically prepping it
5 while he was still working for us.

6 And so Nick's financial arrangements with Vic
7 leading up to the opening of the business, and at least for,
8 you know, 60 days after it's open, those particular financial
9 transactions are relevant because it shows, you know, is Nick
10 receiving payments to open this competing business from Vic,
11 who Vic is getting from Siteone, while Nick is employed with
12 us, because that's a direct breach of fiduciary duty, which
13 we have claims for.

14 THE COURT: No, no, I understand that.

15 MR. GIBBS: So that's the relevance of Nick's
16 personal financial information. We're not looking for
17 everything for all of time, but for at least a reasonable
18 period, particularly early on before we think they got, you
19 know, really organized as a business.

20 THE COURT: What is the period you're talking
21 about?

22 MR. GIBBS: I would say January 1st of 2023 through
23 the end of May of 2023.

24 THE COURT: Mr. Mule?

25 MR. MULE: So as far as -- they have in their

1 possession the bank records, which they subpoenaed from Vic,
2 his American Community Bank records. They also have the
3 corporate records, which I believe is Narrow Way. So I
4 believe they have, you know, the information that -- any
5 information that they would need. So, really, this is
6 unnecessary.

7 THE COURT: Well, that's not really responsive to
8 what Mr. Gibbs is saying, I don't think. He's saying he
9 wants -- recognizing the needs of the case, I think, in terms
10 of proportionality, he's suggesting he wants financial
11 records for Vic for five months. So that it's not -- it's
12 not this --

13 MR. GIBBS: Well, what is the limit?

14 THE COURT: Bank records, I assume.

15 MR. GIBBS: Yeah, the --

16 THE COURT: Well, I guess Nick would identify the
17 bank for that period of time and then you would subpoena the
18 bank. Is that the gist?

19 MR. GIBBS: Yes, Your Honor. I think that's
20 probably they --

21 MR. MULE: For all his bank records? I mean -- or
22 just the transactions?

23 THE COURT: No, just for -- just for five -- it
24 would be --

25 MR. MULE: Are we talking about just the

1 transactions between the defendants and Nick for that time
2 period?

3 THE COURT: Well, let's actually talk about that.
4 Hold on one second. Let me just make one note about
5 something.

6 (Pause)

7 MR. MULE: Your Honor --

8 THE COURT: Okay, go ahead.

9 MR. MULE: -- what I want to point out is --

10 THE COURT: Yeah.

11 MR. MULE: -- they have the bank record. We
12 provided for Don, all the financial transactions between the
13 -- that are between him and other defendants. For Vic, the
14 same thing. So it's -- they're going to get -- it's the same
15 duplicative information. It's just another source.

16 THE COURT: I understand your logic. I'm not sure
17 it's right. So -- well, let me put it this way. Is that --
18 they're looking for five months' worth of information. Your
19 objection is that it's duplicative, or is there more to the
20 objection?

21 MR. MULE: It's both, duplicative and also to the
22 extent it's with respect to the defendants, that's one thing,
23 but it should not be --

24 THE COURT: Well there -- I assume if they go -- if
25 you -- if Nick says, I also bank at American Community Bank,

1 and they send the subpoena to American Community Bank limited
2 to this time frame, the bank is not going to parse those
3 records out.

4 MR. MULE: Right.

5 THE COURT: So the other option is, you go get the
6 records --

7 MR. MULE: Yeah.

8 THE COURT: -- and produce them.

9 MR. MULE: That's -- and that, I think -- that's
10 something that we could do. As long as it's, you know,
11 records with respect to the defendants, because I don't want
12 to -- I don't think he should --

13 THE COURT: Well, no, that's the point, is to --

14 MR. MULE: Exactly.

15 THE COURT: -- so that if he's paying tuition for
16 his daughter's school or whatever, which I don't think Mr.
17 Gibbs wants anyway, that wouldn't come -- be involved.

18 MR. GIBBS: And I think just on that, just to put a
19 bit of a finer point, Your Honor, our only objection to that
20 is the limiting -- limiting it to the named defendants. And
21 the reason I say that, there are at least two entities, Don
22 Caroleo Ventures, LLC, which is also owned by Vic, which
23 received --

24 THE COURT: Speak -- pull the mic up. Don
25 something --

1 MR. GIBBS: Oh, I'm sorry. Don Caroleo Ventures,
2 LLC is another corporate entity owned by Don, which Vic --
3 I'm sorry, owned by Vic. It's confusing because it's Don
4 Caroleo Ventures, LLC., but Vic is the sole owner.

5 Vic, through a Narrow Way, paid that entity
6 \$440,000 of Siteone rent payments. But it's not a party to
7 this case. And so in terms of just the named defendants, I
8 think that's too narrow and it should be, you know, any
9 entity or person who is -- who is funneling money by the
10 defendants to Nick. And I know if there's a more artful way
11 to that, surely, but --

12 THE COURT: All right.

13 MR. GIBBS: But that's in essence is -- not just
14 the named defendants in the complaint, but any entities or
15 persons controlled or directed by defendants to add funds to
16 to this.

17 THE COURT: Okay. I think you may have to -- Mr.
18 Mule, respond to that.

19 MR. MULE: Yeah. So he wants with respect to
20 non-parties, so transactions with the named --

21 THE COURT: Well, but not all non-parties. Parties
22 that are -- non-parties controlled by the defendants.

23 MR. MULE: Yes. Parties and non-parties controlled
24 by defendants, including Don Caroleo Ventures. And was that
25 it?

1 MR. GIBBS: Horseblock Realty, LLC. Just -- I
2 mean, those are the ones that we know of for sure. So just
3 any others, any entity.

4 THE COURT: Okay. Here's how this is going to go.
5 It will be any individuals or entities controlled by the
6 defendants.

7 Well, Mr. Mule, you've got to have a conversation
8 with your client about what -- if there's anything else out
9 there. They may say no, in which case then we're done.
10 There may be one other. Okay. Look at those two. I can't
11 believe that in that full five months -- and then there also
12 has to be non-party entities with whom Nick had some kind of
13 financial transaction. So I think that the -- I don't want
14 to make this a heavier lift than it actually will likely be.
15 Do you understand?

16 (Pause)

17 THE COURT: Okay. So then next is Scapes.

18 MR. GIBBS: Correct, Your Honor.

19 THE COURT: Okay. What do you need from Scapes?

20 MR. GIBBS: I think what we really need from them
21 are your sort of block-and-tackle type accounting records,
22 right? So like, general ledger. You know, I'm not sure
23 exactly what they use, you know, profit-loss statements,
24 balance sheets, those types of sort of accounting records for
25 two reasons.

1 The first of which, we want to understand, you
2 know, the revenue that they've received. We want to
3 understand, you know, which of our customers -- because maybe
4 they have customers that weren't Siteone customers.

5 THE COURT: I would imagine they do, but --

12 MR. MULE: Your Honor, if I may? I thought this
13 was under the category we had before.

14 THE COURT: It kind -- it's related, to be sure.

15 MR. MULE: It is.

16 THE COURT: I mean, we've touched upon this
17 topically. Actually, I kind of think it -- it's a point
18 three here. What I have is, as the amount of business Scapes
19 does in competition with plaintiff, defendants will produce
20 figures demonstrating the amount of business they do on a
21 yearly or other basis, such that in the event plaintiff is
22 able to establish a violation of their rights as asserted in
23 the amended complaint, a damages calculation can be made.
24 That is my effort to truncate this.

25 I think that sentence may cover the Scapes

1 subheading in Column 2. That's what I'm asking you.

2 MR. GIBBS: It sounds like it does, Your Honor.

3 The only thing -- the only just slightly finer point I would
4 tie into to that, and this is just to prevent us from coming
5 back later --

6 THE COURT: I like the idea of that.

7 MR. GIBBS: I could see an issue coming up where we
8 get sort of the big bucket figures. Here's our revenue,
9 expenses, et cetera.

10 THE COURT: Right.

11 MR. GIBBS: But then the defendants make an
12 argument, but not all of the -- all of -- not all of that
13 revenue is from Siteone customers, and therefore, you know,
14 X amount of the revenue is not attributable to the theft of
15 your customer. So if there can also be a category of, you
16 know, records that showed revenue attributable to specific
17 customers, I think that would go a long way to preventing
18 future disputes about which customer the Siteone versus not.

19 THE COURT: Hold on just one second.

20 Okay. So if it said revenue -- if revenues were
21 broken down by -- were in total and broken down by customer,
22 that would satisfy your concern?

23 MR. GIBBS: Yes, Your Honor.

24 THE COURT: Okay. What about that, Mr. Mule? That
25 doesn't sound crazy to me.

1 MR. MULE: Well, I don't know how the record
2 keeping is for this. I mean, so I would have to --

3 THE COURT: I assume they're on a computer
4 somewhere.

5 MR. MULE: Right.

6 MR. MILMAN: I would hope, but remember this is --

7 THE COURT: It's -- yes, it's hard to --

8 MR. MILMAN: -- this is not -- this is not --

9 MR. MULE: This is not Siteone.

10 THE COURT: Okay.

11 MR. MILMAN: This is --

12 THE COURT: Well, all right. I'm going to -- I'm
13 going to -- that application is granted. Just give me one
14 second.

15 MR. MILMAN: I hope it's better than just writing
16 numbers on a piece of paper. But I don't know what -- I
17 don't know

18 THE COURT: Well, the problem is if you're going to
19 write numbers on a piece of paper, you're going to have to
20 give them all the paper.

21 MR. MILMAN: Yeah, exact -- and I understand that,
22 Your Honor. I mean, listen, I don't know what software
23 system they're on. Maybe they're on QuickBooks, and then
24 it's very easy to --

25 THE COURT: Right.

1 MR. MILMAN: -- print out that type of data.

2 THE COURT: But given that QuickBooks is the basic,
3 you know, form of this --

4 MR. MILMAN: Yeah.

5 THE COURT: -- you would think anything else would
6 do it, too.

7 MR. MILMAN: I would hope.

8 (Pause)

9 MR. MULE: And if it's not a Siteon customer,
10 obviously we don't have to write that.

11 THE COURT: Well, you still have to produce the
12 totals.

13 MR. MULE: Totals. Yeah.

14 THE COURT: The other thing is, you have the
15 customer list, right? It was produced to you on attorney's
16 eyes basis.

17 MR. MULE: We have their --

18 THE COURT: Right.

19 MR. MULE: -- Siteone --

20 THE COURT: So you -- I'm just reiterating. You
21 are the one to go through that and compare the customer to
22 customer. And if something is ambiguous, you need to talk to
23 Mr. Gibbs about it. Maybe it's the same. Maybe it's not.
24 But it all has to be transparent.

25 MR. MULE: Just one question for Evan.

1 Evan, the list, is that a Long Island-based list,
2 or --

3 MR. GIBBS: Yes. Yes. It's just -- it's tied only
4 to the Legacy Garden Department stores.

5 MR. MULE: Okay.

6 THE COURT: Okay. So next is Narrow Way Realty.

7 MR. GIBBS: And I think that one is probably pretty
8 easy. I think that as long as counsel confirms there was
9 only one bank.

10 THE COURT: Right. That -- I think that's --

11 MR. GIBBS: Same issue (indiscernible).

12 THE COURT: -- you said that's American Community
13 Bank also, right?

14 MR. MULE: Yes.

15 THE COURT: Okay. So that's confirmed. Let me
16 just make a note on the record, though.

17 (Pause)

18 THE COURT: Okay. Remaining corporate defendants.
19 I don't see why you need -- if Scapes is the competitor and
20 you have their stuff, you've got your damages calculation
21 assuming you've proved liability. Who cares how much money
22 goes to these other defendants?

23 MR. GIBBS: Again, Your Honor, it goes to the --
24 primarily to the beneficiary issue to understand what Vic is
25 doing with the Siteone funds. And it -- because it's not

1 clear how much -- to what extent, you know, that money is
2 coming to these other entities through, for example, Don
3 Caroleo Ventures, which is a non-party, we don't have any
4 records for, that's received 400 and something thousand.

5 THE COURT: So what? As long as you paid the
6 money, you were damaged.

7 MR. GIBBS: That's correct. But it goes not to
8 damages, but to the substance of the beneficiary argument.
9 It's sort of seeing -- understanding where the money is going
10 via Vic.

11 THE COURT: Okay.

12 MR. GIBBS: Through these -- through these other
13 entities.

14 THE COURT: Well, right. But isn't the operative
15 thing you just said via Vic? This whole thing hinges on, is
16 Vic a beneficiary? I mean --

17 MR. GIBBS: That's right.

18 THE COURT: -- that's a practical matter.

19 MR. GIBBS: That's right.

20 THE COURT: So if Vic takes the money and he's
21 like, well, I'm going to do some real estate with the money
22 this month, and I'm going to do some farming this month, who
23 cares? If you've got Vic, you've got it, don't you?

24 MR. GIBBS: Presumably. We don't -- I guess that's
25 the issue, is we don't know what's being done through these

1 corporate entities. That's the point.

2 THE COURT: Okay. The motion to compel those
3 records is denied. I believe it's disproportional to the
4 needs of the case, particularly at this point. The Court is
5 still of the opinion that if plaintiffs are to succeed on the
6 Vic related claims as opposed to the Don or Nick related
7 claims, success requires proving that the money went to Vic,
8 and then whatever Vic did with it subsequent in terms of his
9 business or otherwise is not relevant to the case. So that's
10 that.

11 Let's go to Column 4 -- 3. Wishful thinking there.

12 Information and documents related to competing
13 business. Okay.

14 MR. GIBBS: That's right, Your Honor. And so first
15 what we're looking for is for them to identify all the
16 companies and properties that they own. We don't have a
17 comprehensive list of that. They, in essence, just objected
18 and said, you know, we're aware of the defendant entities,
19 but we're not aware if there are other properties out there
20 that may be potentially going to be, or were planned to be
21 used as competing properties. So it's a fairly
22 straightforward request for --

23 THE COURT: No, I think I get it.

24 Mr. Mule, what about -- it seems to me that if you
25 were to produce a list of all the -- let's just call it

1 corporations for the purposes of this, all the corporations
2 that Vic and Nick own, and then just say one sentence about,
3 this is the business they're in, because they may have
4 interests that have -- you know, they could own restaurants.
5 I don't know. Do that and I think you'll now start to create
6 boundaries to this universe and we'll be able to move on.

7 MR. GIBBS: I completely --

8 THE COURT: Do you see what I'm saying?

9 MR. MULE: I guess the concern is, you know,
10 additional subpoenas, you know, making this thing broader
11 than it is.

12 THE COURT: Well, you know -- I mean, you know
13 where we are. I'm sure you will object accordingly and say,
14 look, this is a pizza place, why does it matter, and I, from
15 where I'm sitting right now would probably say, I agree, I
16 don't think it does matter.

17 But unwillingness to create the limits of the
18 universe is not going to serve this litigation or move the
19 ball. Do you see what I'm saying?

20 MR. MULE: Yeah.

21 THE COURT: Okay.

22 MR. GIBBS: And this one in particular, Your Honor,
23 these were interrogatories, and we really just want to know,
24 you know, what are all the entities and what do they do.
25 That's really --

1 THE COURT: Well, that's kind of where I'm coming
2 down on it so --

3 MR. MULE: All right. So the -- what they do is, I
4 guess -- I mean, we've identified, and I guess we'll identify
5 further. And most of these are single-entity real estate,
6 you know -- they own real estate.

7 THE COURT: That's fine, but with that, you've got
8 real estate that does what, and principally so they can
9 assess. Is it -- I mean, real estate, they could own
10 apartment buildings and just rent them out. Okay. Say that.

11 MR. GIBBS: Okay.

12 THE COURT: And then we get rid of that as a point
13 of contention.

14 MR. GIBBS: Yes, Your Honor. One in particular
15 I'll throw out there was for Neway Management. The
16 description was, it's a management company.

17 THE COURT: Okay. Wait. Let me type this and then
18 we'll do those.

19 MR. GIBBS: Oh, I'm sorry. I'm sorry.

20 (Pause)

21 THE COURT: Okay. Next, competing business.
22 There's a Scapes Supply.

23 MR. GIBBS: Yes, Your Honor. Oh, and that --
24 there's sort of a -- I'm sorry, there's like -- there's --
25 there's really sort of two topics in that first block. It

1 was Nick and Vic.

2 THE COURT: Okay.

3 MR. GIBBS: There are really two things. We have
4 the first, identify the companies and the properties owned.

5 THE COURT: Right.

6 MR. GIBBS: The second piece are documents relating
7 to the formation of Scapes Supply and the lease, purchase,
8 and use of those, all three properties that are issued here.
9 So you've got the initial one that was closed down, the one
10 they're operating at now, and then Horseblock Road. So we're
11 also asking for the documents, all the documents relating to
12 the formation of Scapes Supply, and the lease of the
13 properties.

14 THE COURT: Okay. All the documents relating to
15 the formation of Scapes Supply.

16 MR. GIBBS: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. GIBBS: So corporate formation documents,
19 bylaws, things like that.

20 THE COURT: I understand. Okay. Mr. Mule?

21 MR. MULE: Yeah. I mean, as far as Scapes Supply,
22 I believe we said that we would produce the formation
23 documents to the extent we had them. But the one thing we
24 objected to was, you know, minutes, board minutes. They have
25 no business to seek that information. Corporate formation --

1 THE COURT: No, I disagree. Produce the minutes.

2 You can produce them on an attorney's eyes only basis. To
3 the degree they don't say anything relevant, they'll throw
4 them out.

5 MR. MILMAN: I would -- just so Your Honor -- just
6 so Your Honor knows, we did not handle the formation for any
7 of these companies, so I'm sure --

8 THE COURT: I have no problem believing that.

9 MR. MILMAN: Right.

10 THE COURT: So --

11 MR. MILMAN: And I'm sure it's just the form -- you
12 know, the corporate --

13 THE COURT: I know what -- I understand what you're
14 saying.

15 MR. MILMAN: And whether they did anything beyond
16 that for corporate formalities, I would be surprised. But we
17 will look and turn over --

18 THE COURT: No, I get it. Okay.

19 MR. GIBBS: And these are also, Your Honor -- this
20 would, I guess, go to any type of, you know, communications
21 about the formation of the companies or the corporate
22 purpose.

23 THE COURT: Well, no, you would get that in
24 response to the communications orders, I think.

25 MR. GIBBS: Yeah, I think you're right, Your Honor.

1 I think you're right. That's right. Sorry. I just had it
2 in my notes here.

3 THE COURT: Okay.

4 MR. GIBBS: And then also the other subcategory
5 would be the documents relating to the leasing of three
6 properties as well. And this really falls under -- I think
7 this is really kind of getting both of these blocks of text
8 for Vic and Nick and Scapes. You know, we're really looking
9 for these same documents from both of those groups.

10 THE COURT: What was the last part? We're also
11 looking for these documents for what?

12 MR. GIBBS: So, it's the lease, purchase, and use
13 of the three properties, and we're asking for the materials
14 --

15 THE COURT: Well, the lease, I understand. What
16 purchase and use? Did they own them or did they lease them?

17 MR. GIBBS: So they own two of them and they are
18 leasing one of them.

19 THE COURT: I see.

20 MR. GIBBS: Yes, Your Honor. They're leasing the
21 one that they're currently operating on, and they own the
22 original one, and the Horseblock Road property. I don't know
23 if it --

24 THE COURT: Okay. Next, it's -- there's a Scapes
25 Supply bucket.

1 MR. GIBBS: That's right, Your Honor. I think
2 we've really kind of gone through that. I mean, what --

3 THE COURT: I think so, too. I think that's
4 repetitive.

5 MR. GIBBS: It is.

6 THE COURT: Okay. So, then Narrow Way Realty as
7 opposed to NW2, which is Narrow Way 2, right?

8 MR. GIBBS: Correct, Your Honor.

9 THE COURT: Okay.

10 MR. GIBBS: Correct.

11 THE COURT: And these are the two --

12 MR. GIBBS: These are the other Vic defendant
13 entities. We're particularly looking for -- we want to know
14 who the owners are. Just a list. Just -- we don't have any
15 need of any documents. We just want to --

16 THE COURT: Well, I think they can --

17 MR. MULE: We identified them.

18 THE COURT: Vic is the sole owner of everything.

19 Is that --

20 MR. MULE: Sole owner of each one.

21 THE COURT: Okay. So you've got that.

22 MR. GIBBS: Yeah, and that was really -- it wasn't
23 -- it was another one of those where it wasn't clear if there
24 may have been others.

25 THE COURT: Well, it doesn't matter. You've got it

1 now.

2 MR. GIBBS: If that's it, then we're good.

3 THE COURT: So, okay.

4 MR. GIBBS: And then I think for those, we also
5 asked for -- and this is most relevant, I think, for Narrow
6 Way Realty and for Narrow Way 2.

7 THE COURT: Okay. Just hold on one sec.

8 MR. GIBBS: Yes, Your Honor.

9 (Pause)

10 THE COURT: Okay. Vic is the owner of those
11 entities, and then you -- you said something else.

12 MR. GIBBS: Yes, Your Honor. Then the sort of last
13 block here, Narrow Way Realty and Narrow Way 2, I think for
14 those in particular, we're asking for the board minutes to
15 understand -- because those are the two entities that owned
16 the competing properties, and so to understand sort of the
17 nature of the purchase of the properties, the reason for the
18 --

19 THE COURT: Well, okay. Narrow Way owns your
20 properties, right?

21 MR. GIBBS: Narrow Way Realty Limited owns the
22 property that we operate on, correct. Where it's the -- it's
23 the landlord. It's the landlord.

24 THE COURT: Well, I'm sorry. I'm sorry, yes. You
25 did say that. You did.

1 MR. GIBBS: That's right.

2 THE COURT: The landlord of the property you
3 operate on.

4 MR. GIBBS: Correct.

5 THE COURT: NW2 is --

6 MR. GIBBS: It owns the first property that they
7 bought that they were going to compete on in Yapank.

8 THE COURT: Okay.

9 MR. GIBBS: And it may or may not own some or all
10 of Horseblock Road *and/or* Horseblock Road, LLC, which is the
11 other property.

12 THE COURT: Okay. And --

13 MR. GIBBS: And so understanding that -- those two
14 corporate entities in particular are also --

15 THE COURT: Well, what -- in a perfect world, you
16 get the minutes of the -- from those entities. What do they
17 tell you?

18 MR. GIBBS: What do they tell --

19 THE COURT: Yeah.

20 MR. GIBBS: They tell us, in essence, the plan for
21 the business. You know, what is -- what was the plan to
22 compete. What --

23 THE COURT: Well, but the ones on the competing,
24 they already have -- you have it. They said they compete.

25 MR. GIBBS: That's right, Your Honor. But

1 understanding, I guess, the full context of the timing of
2 that, that -- I think that's probably the most important
3 aspect.

4 THE COURT: I disagree. If Scapes -- if Scapes
5 admits, we're a competitor, that's basically an element you
6 don't have to prove anymore. Right? They admit it. So what
7 then --

8 MR. GIBBS: Correct. The timing -- so I think,
9 Your Honor, for our purposes, the timing becomes relevant
10 because it goes to sort of when the competitive activity
11 began, because they didn't form Scapes until April, but we
12 know that they had start -- at least started forming the
13 business and had started servicing some customers before they
14 actually formed the corporate entity. And we believe that it
15 was done with these -- one or both of these corporate
16 entities. And so that's why these two are particularly
17 relevant, because we believe they were conducting --

18 THE COURT: So if the point you want to make is,
19 you hypothesize that there are documents demonstrating that
20 prior to April 2023, that will demonstrate an intent to
21 compete or actual competition --

22 MR. GIBBS: Correct, Your Honor.

23 THE COURT: -- earlier. And if that's the case
24 then what? What's the benefit to your claim?

25 MR. GIBBS: So at that point we have a clearer

1 picture of exactly when the competition started, and --

2 THE COURT: So what? I'm saying, what like --

3 MR. GIBBS: Well, damages would begin from that
4 point. So the damages would begin from, you know, whenever
5 the first customer was taken. Whenever the -- whenever the
6 competition began. And so in those, you know, probably, you
7 know, three --

8 THE COURT: Right.

9 MR. GIBBS: -- four months.

10 THE COURT: But wouldn't Scapes' documents tell you
11 that?

12 MR. GIBBS: I'm not sure that they would, Your
13 Honor, because that entity wasn't formed until April of 2023.
14 But our understanding is that they started competing before
15 that, so we think there will be additional records with these
16 other two entities. Possibly.

17 THE COURT: Mr. Mule, I'd like your response,
18 keeping in mind I suspect that we're probably talking about
19 10 pieces of paper here.

20 MR. MULE: Yeah. I mean, I don't know exactly what
21 they're talking about, because Narrow Way, again, is the
22 landlord. Narrow Way 2 owned this separate piece of
23 property. They requested from Nick and Vic already,
24 customers, identifying customers, which we've gone over.

25 THE COURT: Well, no, this is just about basically

1 formation documents.

2 MR. MULE: Yeah. So I --

3 THE COURT: With respect -- well, why would you
4 need -- I understand what you said, Mr. Gibbs, with respect
5 to NW2, G5, and Neway, but why would you need it for Narrow
6 Way Realty?

7 MR. GIBBS: Well, we don't know if that entity,
8 which is the landlord entity --

9 THE COURT: Right.

10 MR. GIBBS: -- if it may have initially been used
11 for the competition. And that -- because that ending is
12 certainly I mean, black letter, prohibited from competing.

13 THE COURT: Yeah, I agree with that. I find it
14 hard to believe there is anything that exists, or that that's
15 even the case.

16 Okay. Mr. Mule, back to you in the sense that I
17 think we're talking about 10 pieces of paper and I kind of
18 feel like, who cares.

19 MR. MULE: I --

20 THE COURT: You see what I'm saying?

21 MR. MULE: Yeah. I mean, as far as like, minutes
22 from --

23 THE COURT: Yeah, formation documents and minutes.

24 MR. MULE: -- if they have any?

25 THE COURT: Okay. That's -- I think you and I are

1 on the same page.

2 (Pause)

3 THE COURT: Okay. So that leaves Column 4, vendors
4 and cell phone carries.

5 MR. GIBBS: And I think this is really -- at this
6 point, we're really just focused on the vendors. You know, I
7 think we went through the communications that they're going
8 to be required to provide, so I don't think we'll need to
9 separately subpoena the phone carries, so I think that one's
10 probably pretty --

11 THE COURT: Okay. Hold on. With respect to that,
12 you wanted -- it was call logs as part of the communications,
13 right?

14 MR. GIBBS: Correct, Your Honor. Correct.

15 THE COURT: Okay. I just want to make sure I put
16 it in there. Hold on.

17 (Pause)

18 THE COURT: Okay. Okay. I think that's right.
19 What -- go ahead, Mr. Gibbs.

20 MR. GIBBS: Yes, Your Honor. So I think really
21 what's remaining here is just an identification of all the IT
22 vendors that have provided services to the individual
23 defendants and the businesses that they own or control.

24 THE COURT: Why would you need that if they produce
25 call logs? Presumably, they're not going to type up --

1 MR. GIBBS: Oh, no, I'm sorry. I'm sorry. These -
2 - those two things are unrelated. Those two things, the call
3 logs as --

4 THE COURT: Right.

5 MR. GIBBS: -- we -- we can --

6 THE COURT: Oh, IT, like internal -- okay. I --

7 MR. GIBBS: Yes, Your Honor. Yes.

8 THE COURT: -- I got you.

9 MR. GIBBS: So we're talking about the IT vendors.
10 So for example, whomever it is that set up their -- you know,
11 I don't know if they're using Counterpoint, or what
12 particular system they're using.

13 THE COURT: Okay. And what would that tell you?

14 MR. GIBBS: So, Your Honor, our trade secrets claim
15 is that Nick took the computer -- or actually two computers
16 that had --

17 THE COURT: Okay.

18 MR. GIBBS: -- all of these materials.

19 THE COURT: What material? What is the trade
20 secret? What -- what are the materials --

21 MR. GIBBS: Yes.

22 THE COURT: -- that the computer soft --

23 MR. GIBBS: Your Honor, and that's a great point.
24 I brought the trade secrets that we've produced, we've --
25 we've produced them.

1 THE COURT: No, tell me in like, normal English. I
2 don't want lawyerese in binders.

3 MR. GIBBS: Absolutely. We had a system called
4 Counterpoint --

5 THE COURT: Okay.

6 MR. GIBBS: -- which was our --

7 THE COURT: Is that a computer platform, or --

8 MR. GIBBS: It is. It is.

9 THE COURT: Okay.

10 MR. GIBBS: It's a computer software platform, and
11 it's basically your CRM, your Customer Relations Management
12 platform.

13 THE COURT: Your C --

14 MR. GIBBS: CRM.

15 THE COURT: Oh, CRM. Okay.

16 MR. GIBBS: Platform. So Customer Relations
17 Management platform.

18 THE COURT: Got it.

19 MR. GIBBS: And so this system, they had at the
20 Legacy Garden Department stores, and they had it the entire
21 time the defendants worked for Garden Department, and at
22 Siteone. They were not integrated onto a different system.

23 And so this particular system, the Counterpoint
24 system, it contains --

25 THE COURT: So let me just -- so this Counterpoint

1 system was originally owned by Garden Department and you
2 bought it as part of the assets. That's a question. That's
3 right?

4 MR. GIBBS: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. GIBBS: That is absolutely correct.

7 So this system, it housed, in essence, all of the
8 business and much of the financial information for the legacy
9 Garden Department --

10 THE COURT: Okay.

11 MR. GIBBS: -- and then Siteone for the period of
12 time the defendants continued to work for Siteone.

13 And so that particular system, it's really easy to
14 generate reports out of the system. You can say, give me a
15 full customer list, and it spits you out a full customer
16 list. You can say, for this particular customer, show me
17 their entire order history for the whole time they've been a
18 customer for Siteone Garden Department. It will show you
19 that information. It will show you profit margins. It will
20 show you -- I mean, it gets as granular as you want to get on
21 a customer by customer, a product by product, vendor by
22 vendor.

23 THE COURT: Okay.

24 MR. GIBBS: I mean, it's really everything --

25 THE COURT: So --

1 MR. GIBBS: -- that you would need to know.

2 THE COURT: -- if I were to parrot back -- reflect
3 back to you. Let me parrot back to you. It's confidential
4 customer information? Is that the trade secret?

5 MR. GIBBS: Customer and business information.

6 THE COURT: Well, that -- does business mean
7 customer and vendor then? Is that the other part of
8 business, or --

9 MR. GIBBS: The other piece would be the financial
10 component. So profit.

11 THE COURT: Okay. Got it.

12 MR. GIBBS: Profitability of particular products.

13 THE COURT: I see.

14 MR. GIBBS: See the process that we're offering
15 those products and the margins that we get on those products.

16 THE COURT: And that's all maintained
17 confidentially, meaning it's not published anywhere?

18 MR. GIBBS: Correct. Correct.

19 THE COURT: Okay.

20 MR. GIBBS: It was -- it was in this Counterpoint
21 system. And so, you know, the allegation in the complaint is
22 that Nick took two computers that had this material on those
23 computers.

24 THE COURT: So not just the platform, but the
25 actual information.

1 MR. GIBBS: Exactly. Exactly. Now there are --
2 you know, there are different ways that that could have been
3 done. It could have been -- you know, the entire system
4 could have been saved locally. He could have just generated
5 reports, kept those reports. But to bring this back to the
6 discovery issue that's relevant here, we don't know -- what
7 we want to know is, who is their IT vendor, and did that IT
8 vendor help upload that information --

9 THE COURT: Okay.

10 MR. GIBBS: -- to them, and some way facilitate the
11 transfer of the trade secrets to the new business.

12 THE COURT: No, no, I understand what you're
13 saying.

14 Mr. Mule, it seems to me that if you identify your
15 IT vendor, and your IT vendor comes to a deposition and says,
16 no, no, no, I -- they wanted something to do the following 10
17 things, I created a platform for them, and then I went home,
18 that's helpful to you, right?

19 MR. MULE: I mean, it's --

20 THE COURT: I mean, it would seem to be. I'm
21 trying to think of information that you could produce that
22 will end this case one way or the other.

23 MR. MULE: Yeah. Who is the -- who is the IT
24 vendor.

25 MR. MILMAN: Like I said, this is Vic and Nick

1 again, and we just got involved and --

2 THE COURT: No, no, I under --

3 MR. MILMAN: -- you know, there were
4 representations made by two prior law firms that we're not
5 really familiar with.

6 THE COURT: No, no, I understand that, but I could
7 -- I could envision a world where they, A, they took the
8 computers and everything and uploaded it, stole it, and boom,
9 they're off to the races.

10 I can also envision a world where your prior
11 lawyers out lawyered their prior lawyers, and two guys who
12 are not bound went and competed. A third guy said, I'd love
13 to help you, Dad and best friend. I can't. I'm bound. But
14 on May 16th, 2027, when my noncompete ends, count me in in
15 the new one.

16 But either way, it seems to me like this
17 information would be helpful to somebody in resolving this.
18 So I guess my ultimate question is, do you have an objection
19 to producing this information? And if so, what is that
20 objection, Mr. Mule?

21 MR. MULE: Yeah. I mean, as far as -- I'm just
22 trying to look for what they're request was, because --

23 THE COURT: They just want to identify your IT
24 vendors.

25 MR. MULE: Well, I think that's --

1 THE COURT: I think you -- I think it's in -- well,
2 it's in some -- it's in the Court's interest that you do
3 that. Let's put it that way. Okay.

4 (Pause)

5 THE COURT: What is the difference between ID and
6 IT vendors?

7 MR. GIBBS: Oh, that -- ID is just shorthand. So
8 that was supposed to say, refuse to identify.

9 THE COURT: Oh, I see. Duh. Never mind. Okay.
10 Got it.

11 MR. GIBBS: Yes, Your Honor.

12 THE COURT: Okay. That does the charge, right?

13 MR. GIBBS: That is the charge, Your Honor, and I
14 believe from our perspective, that deals with motions --
15 Docket Entries 141, 152, 153, 154, 155, 156, 157, and 158.

16 THE COURT: Okay. Let's flip that on its head.
17 What remains?

18 MR. GIBBS: What remains would be Docket Numbers
19 142. If we go back to the beginning, it will be 142, the
20 motion to quash the Don defendants bank subpoenas.

21 THE COURT: Okay. Let me just -- all right. What
22 else?

23 MR. GIBBS: The other would be the motion to extend
24 the deadline to add parties and amend pleadings.

25 THE COURT: And that's -- what number is that? I

1 just --

2 MR. GIBBS: Oh, I'm sorry. That's 144.

3 THE COURT: Okay. And then what -- what else, if
4 anything?

5 MR. GIBBS: 163, which is a motion filed by
6 plaintiffs to quash the AT&T subpoenas, which I think based
7 on the Court's ruling --

8 MR. MULE: You mean the defendants.

9 MR. GIBBS: I'm sorry, defendants. Based on the
10 rulings around the communications, I think at this juncture
11 we can withdraw that subpoena because --

12 THE COURT: I think you can too.

13 MR. GIBBS: I think that one's easily dealt with.

14 THE COURT: So what's -- I'm going to say -- what's
15 the -- that you get for that? I'm sorry.

16 MR. GIBBS: Oh, I'm sorry. That's 163.

17 (Pause)

18 THE COURT: Okay. So that puts us back at 142 and
19 144.

20 MR. GIBBS: And there's one last -- there's one
21 very last one, it's 171, which we just filed last Thursday,
22 and that's to enforce the four subpoenas, the Rose Casper,
23 Janet Demano, which I think based on the Court's rulings on
24 those, we can probably withdraw those at this time.

25 THE COURT: Okay. What --

1 MR. GIBBS: Sorry if I'm going too fast, Your
2 Honor.

3 THE COURT: No, no, that's fine. I'm just going to
4 mark the motions as withdrawn, and then we'll talk about what
5 you get when you get it, I guess.

6 Okay. So with that, what's left are 142 and 144.
7 Is that right?

8 MR. GIBBS: Yes, Your Honor. I think a one -- the
9 one sort of caveat is on 171, we can withdraw it with respect
10 to Rose Casper and Janet Demano, but there were two other
11 entities there. The Don Caroleo Ventures and the Horseblock
12 Road properties. We had asked for documents from them as
13 well.

14 THE COURT: I'm just read -- just bear with me.
15 I'm reading it.

16 MR. GIBBS: Yes, Your Honor.

17 THE COURT: Yeah, I don't see how either of these
18 are relevant to your claims. I think once Vic gets the money
19 --

20 MR. GIBBS: Okay.

21 THE COURT: -- you paid him, and then he's going to
22 produce some kind of -- this is the business Scapes does, and
23 your extensive damages analysis gets condensed very neatly
24 -- nicely and neatly to a chart that if you're successful in
25 liability, the jury will digest. Unless this is to the

1 bench, in which case Judge Brown will digest it.

2 So the motion --

3 MR. GIBBS: If it's Your Honor's preference, we can
4 withdraw that, we can deny the motion.

5 THE COURT: Withdraw the motion because I'm going
6 to deny it for now.

7 MR. GIBBS: Okay. We'll withdraw --

8 THE COURT: And if there's a more crystalized
9 reason for that information that arises because of something
10 else that's produced --

11 MR. GIBBS: Yes, Your Honor.

12 THE COURT: -- you'll make a specific request.

13 Okay. So back to 142 and 144. 142 being really the only
14 substantive one.

15 MR. GIBBS: Yep.

16 THE COURT: This is a motion to quash subpoenas,
17 and there's some under-seal filings also that go with this.

18 MR. GIBBS: Yes, Your Honor. Yeah. And I'm sorry
19 I didn't mention that.

20 THE COURT: That's okay.

21 MR. GIBBS: 142 is the main one, and then 148 is
22 the under seal motion.

23 THE COURT: Okay. Now the subpoenas -- it's a
24 motion to quash subpoenas from Mr. Mule, right?

25 MR. GIBBS: Yes, Your Honor.

1 THE COURT: And three of them are to --

2 MR. GIBBS: Yes.

3 THE COURT: Mr. Mule, you go first. Tell me.

4 It's your motion.

5 MR. MULE: Okay. Yes, Your Honor.

6 MR. GIBBS: Well, it's actually -- it's our motion.

7 THE COURT: I'm sorry, it's your motion.

8 MR. GIBBS: Yes, Your Honor.

9 THE COURT: Sorry. All right. You go first. Do
10 that.

11 MR. GIBBS: Okay. So this one's relatively
12 straight forward, I think. They subpoenaed Siteone's banks
13 for information. There's two components to this.

14 The first is, they subpoenaed Siteone's banks for
15 information relating to payments to five particular current
16 Siteone employees.

17 THE COURT: Oh, the idea that you paid for their
18 testimony and affidavits.

19 MR. GIBBS: That -- correct, Your Honor. Correct,
20 Your Honor.

21 THE COURT: Okay. Mr. Mule, what's your basis for
22 thinking they were paid?

23 MR. MULE: Yeah. So, Your Honor, for this it's
24 basically -- we just want to know and get a picture if there
25 are any payments to these --

1 THE COURT: Do you have any reason to believe --

2 MR. MULE: -- to these folks.

3 THE COURT: -- other than you want to be belt and
4 suspenders, that there was a payment above their -- what
5 salary compensations were?

6 MR. MULE: Well, there -- this is multiple
7 components. So for instance, the Earls firm and --

8 THE COURT: Let me -- let me help you out with
9 that.

10 MR. MULE: Yes.

11 THE COURT: That's been -- that's granted. That --
12 you're not getting anything from the Earls firm about the
13 sexual harassment. Don settled his claims with them. That
14 is done in my opinion, has nothing to do with this.

15 MR. MULE: Oh, that and the Hawkins firm. This is
16 the -- this has to do with -- and I just want to make sure
17 you understand it, Your Honor.

18 THE COURT: Oh, sorry. I may have -- I may have
19 spoken out of turn.

20 MR. MULE: It's Earls and the Hawkins firm.
21 They're the ones who did the investigation --

22 THE COURT: Right.

23 MR. MULE: -- supposedly, which we never got any
24 information about --

25 THE COURT: Okay.

1 MR. MULE: -- you know, which we had requested
2 during --

3 THE COURT: So what?

4 MR. MULE: -- negotiations.

5 THE COURT: He sat and then he settled the claims
6 for \$2 million. Right?

7 MR. MULE: This -- the -- there you go. And --

8 THE COURT: All right. Walk me -- walk me through
9 it then. Walk me through it.

10 MR. MULE: Well, misrepresentation. The --

11 MR. MILMAN: We didn't get -- we didn't get a
12 severance package. We got a payout which was less than what
13 he was entitled to, because we took the position that this
14 was a wrongful termination. They basically took the lesser
15 of two evils. They took the word of the HR director versus
16 Don, and said, we'll pay him instead of dealing with having
17 to worry about our HR director bringing an action.

18 THE COURT: Yeah, that doesn't change anything I've
19 said.

20 MR. MILMAN: Well, we really believe this was --
21 this sting --

22 THE COURT: I believe you believe it. And then you
23 settled that claim. It's not part of this case.

24 MR. MILMAN: But if a payment was made to Ms.
25 Charla above and beyond her salary, that would show that they

1 paid her off.

2 THE COURT: I agree. You have no evidence that
3 would support something like that.

4 MR. MILMAN: Well, we do have evidence to support
5 something like that because this is such a sham discharge.
6 All they had to do was employ him for two and a half more
7 months and his term would have expired on its own, and they
8 could have easily separated them.

9 So we -- we truly believe that they were facing an
10 action from her. This was the most -- there was no
11 transparency whatsoever in this incident, the investigation,
12 and the termination, and we feel we should -- you know, what
13 I thought was riches, you know, in their papers, they
14 basically say, this is -- well, we're on a fishing
15 expedition. They're on a fishing expedition.

16 THE COURT: You can both be on a fishing
17 expedition.

18 MR. MILMAN: And so we should be granted some
19 latitude here. And at the very least, you know, we should be
20 given payroll records or records of monies that were paid to
21 her.

22 THE COURT: They offered you the payroll records.

23 MR. MILMAN: But the payroll records wouldn't come
24 up in a separate -- you know, there's all types of ways they
25 can --

1 THE COURT: Correct. And some of those ways do not
2 include the information you seek. They could walk in with a
3 suitcase of cash to pay them, and you wouldn't get that
4 information. And I suspect a company of this sophistication
5 would not have the documents that would demonstrate what
6 you're hypothesizing in the records you seek in any event.
7 In fact, I am extremely skeptical that that would be the
8 case, where they create an obvious paper trail of abroad, for
9 someone who works for them anyway and might feel -- if they
10 were going to lie, would feel the pressure regardless.

11 MR. MILMAN: I agree. If we were invested -- if we
12 were -- had a dispute over the termination, I might
13 understand your point a little bit better. But all we're --
14 and I probably am not going to push too far back on
15 (indiscernible).

16 THE COURT: Okay.

24 THE COURT: Okay.

25 MR. GIBBS: Your Honor, the --

1 THE COURT: Anything else?

2 MR. MULE: Yeah. And the other part is, you know,
3 the timing between the settlement that occurred and the
4 timing of this case. I mean, it's right on the heels of the
5 settlement. Bam, this case came. So that's dealing just
6 with the -- with the bank subpoenas. We haven't really gone
7 into the deposition. I assume that will be -- we'll address
8 that next.

14 I see -- none of that is relevant, and I think
15 there's a separate section, though, right? Weren't there two
16 things in here, or am I misremembering?

17 MR. GIBBS: Yes, Your Honor. So there was the --
18 there was the -- there was a bank record for the payments of
19 the employees, and then the notice to depose Laura Shartle
20 (ph), who was the HR --

21 THE COURT: Okay.

22 MR. GIBBS: -- employee.

1 MR. GIBBS: Well, they're separate just in that
2 they want records to show that they received payment. So
3 their -- let me -- here's a better way to explain it, Your
4 Honor.

5 THE COURT: Oh, these are people who just provided
6 the supporting affidavits to you when you made a motion for
7 an injunction.

8 MR. GIBBS: That's right. That's right. They're
9 supporting affidavits --

10 THE COURT: Okay.

11 MR. GIBBS: -- and then Laura Shartle. So those
12 are the two groups of people.

13 THE COURT: Okay. Do you want to be heard on that,
14 Mr. Mule?

15 MR. MULE: Yeah. I mean for those -- Mr. Cassaro
16 and Mr. Trama, those are the ones that had the supporting
17 declarations.

18 THE COURT: Right.

19 MR. MULE: And, you know, at this point like we
20 said, the -- they're the ones who were identified --

21 THE COURT: Understood.

22 MR. MULE: -- as people with interest, with -- I'm
23 sorry, with knowledge as to supposed protection of trade
24 secrets, what these --

25 THE COURT: And I assume you'll depose them at some

1 point.

2 MR. MULE: Yeah, that's right.

3 THE COURT: Right? You've already indicated you
4 want to.

5 MR. MULE: And we were looking to do it sooner
6 rather than later.

7 THE COURT: I understand. I understand that.

8 Okay. Motion for protective order is granted in its
9 entirety. I think the whole thing is a fishing expedition in
10 this regard. I understand the logic of defendant's point, I
11 just think this is -- to say it's disproportionate to the
12 needs of this case is an understatement, and so that motion
13 is granted. Does that cover everything that's pending on the
14 docket?

15 MR. GIBBS: Other than the deadline issues, yes,
16 Your Honor.

17 THE COURT: Okay. We'll do that. That's a motion,
18 but that's like with a small M. Hold on.

19 MR. GIBBS: Yes, Your Honor.

20 (Pause)

21 THE COURT: Okay. Mr. Mule, you're getting --
22 you're ordered to produce a variety of information. How long
23 will it take you to get it all together, do you think?

24 (Pause)

25 MR. MULE: So, Your Honor, we were thinking with

1 getting -- you know, this -- the hit list and all those --

2 THE COURT: All of it. Yes.

3 MR. MULE: -- but then we -- after that to review
4 the documents and produce what is responsive, I would say six
5 weeks.

6 THE COURT: Okay. You've got it. And then after
7 six weeks you're going to do depositions?

8 MR. MULE: Yes.

9 THE COURT: Okay. Six weeks is November 26th.

10 MR. GIBBS: And I'm assuming, Your Honor, the
11 November 26th deadline, that would be a substantial
12 completion of production. Is that what -- is that how you're
13 interpreting that deadline?

14 THE COURT: I'm interpreting it as there's an order
15 that says, produce this. Produce it by November 26th. I
16 don't want to --

17 MR. GIBBS: Okay.

18 THE COURT: -- I don't want to really see you
19 again, but I -- we will.

20 So you'll produce all that, and then in terms of
21 depositions, remind me. What are the magnitude? How many
22 are we talking about?

23 MR. GIBBS: Well, it's going to be a lot, Your
24 Honor, for both sides. We were thinking -- we had initially
25 discussed 10 to 15 per side.

1 THE COURT: Okay. And are we still -- is that
2 still our universe?

3 MR. MULE: We're -- we had, it looked like around
4 30 or so total.

5 THE COURT: Okay. Why don't we do this? After
6 that, I'll instruct you to file a status report that includes
7 a deposition schedule. This way we can keep the momentum
8 going. And I'll give you a week after the production to do
9 that. I'm just pulling up a calendar again. I'll give you a
10 little more because it's Thanksgiving.

11 (Pause)

12 THE COURT: Will there be experts in this case? It
13 doesn't seem like it. You tell me.

14 MR. GIBBS: There will -- yes, Your Honor.

15 THE COURT: On what?

16 MR. GIBBS: Economics. Economics expert.

17 THE COURT: Okay.

18 MR. GIBBS: At a minimum. Could be -- I don't know
19 if there are landscape supply industry experts, but --

20 THE COURT: Good question.

21 MR. GIBBS: -- I think probably just economist.

22 THE COURT: Okay.

23 (Pause)

24 MR. MULE: Your Honor, one thing we were looking at
25 --

1 THE COURT: Okay, just give me one second --

2 MR. MULE: Sure.

3 THE COURT: -- and we'll get to it.

4 (Pause)

5 THE COURT: Mr. Mule, yes.

6 MR. MULE: Okay. So just a couple of things we
7 just wanted to raise.

8 One is, we've had the rulings, obviously on --
9 regarding to customers and identifying gross with respect to
10 total, and then with respect to breaking it down by former
11 Siteone customers.

12 THE COURT: Yes.

13 MR. MULE: We -- we still have out there -- and we
14 may want to -- I guess we'll address it by maybe separate
15 application, is the idea of moving maybe on the -- you know,
16 on the pleadings because there hasn't -- and we feel we're
17 disadvantaged in the sense of -- you know, usually they would
18 identify what those supposed trade secrets are. But here, to
19 the extent that they're getting customer lists, they're going
20 to say, ah-ha, there it is. Now you've --

21 THE COURT: What do you mean to the extent they're
22 getting customer lists?

23 MR. MULE: Well, they're going to get -- we're
24 going to identify by breakdown by customers --

25 THE COURT: Oh, you mean, Jane did \$1,000 in

1 business. Sue --

2 MR. MULE: Yeah, exactly.

3 THE COURT: Okay.

4 MR. MULE: And they're going to -- they're going to
5 come back and say, ah-ha, that's the, you know, evidence of,
6 you know, trade secret --

7 THE COURT: Okay.

8 MR. MULE: -- violation. So this is part of why we
9 want to be able to perhaps move on that, and also --

10 THE COURT: Okay.

11 MR. MULE: -- on the beneficiary theory, these two
12 different things --

13 THE COURT: I think you could -- I mean, you have
14 to make those motions to Judge Brown in the first instance,
15 but there's -- nothing here is going to prevent anything
16 there, and we'll see what he does with it. I get your
17 arguments. I don't know are they appropriate now or --

18 MR. MULE: Okay.

19 THE COURT: -- or are they better saved for the end
20 of discovery --

21 MR. MULE: Yeah.

22 THE COURT: I honestly don't --

23 MR. MULE: All right. And I think some of these,
24 like even the beneficiary, I don't think we necessarily need
25 depositions --

1 THE COURT: Well, no. I could envision a
2 circumstance where depositions would help. This may not be
3 that case.

4 MR. MULE: No.

5 THE COURT: I mean, it's strange in the sense that
6 I guess the only person who signed them that's here is Vic,
7 right? Because Don is going to say I didn't compete. I mean
8 -- but he's not going to deny that he was bound, right?

9 So it's -- you'll say beneficiary means you
10 provided a definition. He's going to say, I thought it meant
11 not that. And then, I don't know, is that -- maybe that's
12 summary judgment. Maybe it's -- I don't know. I don't know.
13 I certainly don't have an opinion on it, but there's nothing
14 preventing you from making that application --

15 MR. MULE: Okay.

16 THE COURT: -- and filling a premotion letter.

17 MR. MULE: All right.

18 THE COURT: Anything else?

19 MR. MULE: No.

20 THE COURT: Anything else?

21 MR. MULE: Not from our side.

22 THE COURT: I'm getting a nod of no. No, nothing
23 else. Mr. Gibbs, anything else?

24 MR. GIBBS: Not from us, Your Honor.

25 THE COURT: Okay. Have a good day, everybody.

1 MR. MULE: All right. Thank you.

2 MR. MILMAN: Thank you.

3 MR. GIBBS: Thank you.

4 (Proceedings concluded at 1:31 p.m.)

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2 I, CHRISTINE FIORE, court-approved transcriber and
3 certified electronic reporter and transcriber, certify that
4 the foregoing is a correct transcript from the official
5 electronic sound recording of the proceedings in the above-
6 entitled matter.

7 
8

9 _____ November 1, 2024

10 Christine Fiore, CERT

11 Transcriber

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